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OF

AMERICAN AND ENGLISH LAW,

WITH

DEFINITIONS OF THE TECHNICAL TERMS OF
THE CANON AND CIVIL LAWS.

ALSO, CONTAINING

A FULL COLLECTION OF LATIN MAXIMS,

AND CITATIONS OF UPWARDS OF FORTY THOUSAND REPORTED CASES,
IN WHICH WORDS AND PHRASES HAVE BEEN JUDICIALLY
DEFINED OR CONSTRUED.

VOL. II.

BY

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LAW DICTIONARY.

L.

L. S.—See **LOCUS SIGILLI**.

L. S., (meaning of). 5 Pick. (Mass.) 497; 5 Johns. (N. Y.) 239.

LA CHAMBRE DES ESTELLLES.—The star-chamber.

LAAS.—A net, gin, or snare.

LABEL.—(1) Anything appended to a larger writing, as a codicil. (2) A narrow slip of paper or parchment affixed to a deed or writ, in order to hold the appending seal. (3) A term of heraldry. (4) A slip of paper put upon a package or parcel containing a description of the contents of such package or parcel.

LABINA.—In old records, watery land.

LABOR.—Labor has been distinguished into productive and unproductive. Productive is employed in creating permanent utilities, whether embodied in human beings or in any other animate or inanimate objects. Unproductive does not terminate in the creation of material wealth, and, however largely or successfully practiced, does not render the community and the world at large richer in material products, but poorer by all that is consumed by the laborers while so employed. (1 Mill. Pol. Ec. 33.) The greatest improvements in the productive powers of labor, and the greater part of the skill, dexterity, and judgment with which it is anywhere directed or applied, seem to have been the effects of the division of labor. "Labor," observed Adam Smith, (Wealth of Nat. b. 1, c. v.,) "is the real measure of the exchangeable value of all commodities."

LABOR, (in a statute). 10 Hun (N. Y.) 18; 76 N. Y. 50.

— (in an insurance policy). 12 East 648.

— (not synonymous with "business," or "work"). 2 Ohio St. 387.

LABOR, PERSONAL, (what is not). 1 Barn. & Ad. 568.

LABORARIS.—An ancient writ against persons who refused to serve and do labor, and

who had no means of living; or against such as, having served in the winter, refused to serve in the summer. *Reg. Orig.* 189.

LABORERS.—Servants in husbandry or manufactures, not living *intra mœnia*. (See **DOMESTICS**.) These are sometimes engaged by the day or week, but, in England, are understood to be hired for a year where no particular time is limited, and the wages are so much *per annum*. And with respect to these, regulation is made by various acts of parliament, which vest in the justices of the peace the power of compelling persons not having any visible livelihood to go out to service in husbandry, or in certain specific trades, for the promotion of honest industry; and, also, to empower the justices to determine differences arising between such laborers and their masters. See **MASTER AND SERVANT**.

LABORER, (defined). 34 Cal. 302; 82 Pa. St. 469.

— (who is). 5 How. (N. Y.) Pr. 454; 5 Binn. (Pa.) 169; 4 Best & S. 927.

— (who is not). 39 Mich. 47, 594; 38 Barb. (N. Y.) 390; 24 N. Y. 481; 81 N. C. 340; 77 Pa. St. 407.

— (equivalent to "employé"). 3 Stew. (N. J.) 590.

— (in an indictment applied to a female). 4 Com. Dig. 666 n.

— (in lien law). 77 Pa. St. 107; 2 Utah T. 219.

— (in a statute). 24 N. Y. 482; 8 East 124.

LABORER OR SERVANT, (in a statute). 16 Hun (N. Y.) 186, 188.

LABORER OR WORKMAN, (in mechanics' lien law). 84 Pa. St. 168; 24 Am. Rep. 189.

LABORERS, (in railroad charter). 5 How. (N. Y.) Pr. 454.

LACE.—A measure of land equal to one pole. This term is widely used in Cornwall

LACERTA.—In old records, a fathom.

LACHES.—Negligence or unreasonable delay in asserting or enforcing a right,

In the old books the term is chiefly used with reference to rights of entry. Thus, while the doctrine of "descent cast" was in force, if an infant was disseised of land, and the disseisor died in possession, the infant was not deprived of his right of entry, as a person of full age would have been, because no laches could be imputed to an infant in such a case. Litt. §§ 402, 726. As to laches of suit, laches of pleading, &c., see Perkins § 374 *et seq.* See DISABILITY; also, INTRUSION, § 2, as to laches by the crown.

§ 2. At the present day, "laches" is generally used to denote unreasonable delay in enforcing an equitable right. Thus, if a person discovers that he has been induced by fraud to enter into an instrument, and then waits an unnecessary time before taking proceedings to set it aside, this laches will disentitle him to relief. He is, however, entitled to a reasonable time for the purpose of making inquiries, and obtaining advice, &c. (See *Erlanger v. New Sombrero Co.*, 3 App. Cas. 1218.) Where an equitable right of action is analogous to a legal right of action, and there is a statute of limitations fixing a limit of time for bringing actions at law to enforce such claims, a court of equity will, by analogy, apply the same limit of time to proceedings taken to enforce the equitable right. *Peele v. Gurney*, L. R. 6 H. L. 384.

LACTA.—A defect in the weight of money.

LACUNA.—In old records, a ditch or dyke; a furrow for a drain; a blank in writing.

LADA.—*SAXON*: *lathian*, to purge.

Purgation, exculpation. There were three kinds: (1) That wherein the accused cleared himself by his own oath, supported by the oaths of his consacrmentals (compurgators), according to the number of which the *lada* was said to be either simple or threefold; (2) ordeal; (3) corned. (See CORNED BREAD.) Also, a service which consisted in supplying the lord with beasts of burthen; or, as defined by Roquefort, *service qu'un vassal devoit à son seigneur, et qui consistoit à faire quelques voyages par ses bêtes de somme.*—*Anc. Inst. Eng.*

LADA.—*SAXON*: *lathian*, to convene or assemble.

A lath, or inferior court of justice; also, a course of water, or a broad-way.

LADH, or LODH.—The mouth of a river.

LADEN, (in a statute). 3 How. (U. S.) 151.

LADEN IN BULK.—Freighted with a cargo which is neither in casks, boxes, bales, nor cases, but lies loose in the hold, being defended from wet or moisture by a number of mats and a quantity of dunnage. Cargoes of corn, salt, &c., are usually so shipped.—*Wharton*.

LADING.—See BILL OF LADING.

LADY.—The title borne in England by the wives of knights, and of all degrees above them, except the wives of bishops. See DAME.

LADY-COURT.—The court of a lady of the manor.

LADY'S FRIEND.—An officer of the House of Commons, whose duty it was to take care that a husband, who sued for a divorce, made a suitable provision for his divorced wife, if the House of Lords had not provided for it.—*Wharton*.

LÆSÆ MAJESTATIS.—The crime of high treason. Glanv. 1, l. c. ii.

LÆSIO ULTRA DIMIDIUM VEL ENORMIS.—The injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject-matter of the contract, *e. g.* when a vendor had not received half the value of property sold, or the purchaser had paid more than double value. Colq. Rom. Civ. Law, § 2094.

LÆSIONE FIDEI, SUITS PRO.—Suits or actions for breach of faith in civil contracts, which the clergy, in the reign of Stephen, introduced into the spiritual courts, were so termed. By means of these suits they took cognizance of many matters of contract which in strictness belonged to the temporal courts. It is conjectured that the pretense on which they founded this claim to an extended jurisdiction was that, oaths and faith solemnly plighted being of a religious nature, the breach of them belonged more properly to the spiritual than to the lay tribunals (1 Reeves Hist. Eng. Law 74). These suits, along with the jurisdiction assumed over express and implied or resulting uses, open or secret, contributed to the development of certain branches of the equitable jurisdiction of the Court of Chancery.—*Brown*.

LÆSIWERP.—A thing surrendered into the hands or power of another; a thing given or delivered.—*Spel. Gloss*.

LÆT.—One of a class between servile and free.

LÆTERE JERUSALEM.—Faster offerings, so called from these words in the hymn of the day. They are also denominated *quadragesimalia*.

LÆTHE, or **LATHE**.—A division or district peculiar to the county of Kent.—*Spel. Gloss.*

LA FORDSWIC.—A betraying of one's lord or master.

LAGA.—Law.—*Spel. Gloss.*

LAN.—Goods tied to a buoy and sunk in sea; also a right which the chief lord of the fee had to take goods cast on shore by the violence of the sea. Bract. 1, 3, c. ii.; 5 Co. 106 b. See **FLOTSAM**.

LAGE-DAY.—A day of open court; the day of the county court.—*Cowell.*

LAGE-MAN.—A juror.—*Cowell.*

LAGEN.—A measure of six sextarii. Fleta 1, 2, c. viii.

LAGHSLITE.—A breach of law; a punishment for breaking the law.—*Cowell.*

LAGON.—See **LAGAN**

LAGU.—Law; also used to express the territory or district in which a particular law was in force, as *Denalagu*, *Merena lagu*, &c., which may be looked upon as abbreviated forms of the *district under Danish law*, *Merian law*, &c., without supposing, with Bishop Nicholson, that in these instances the word *lagu* does not stand for "law," but for *regio provincie*. See **DANELAGE**.

LAHMAN, or **LAGEMANNUS**.—An old word for a lawyer. Domesd. I. 189.

LAH-SLIT.—A mulct for offenses committed by the Danes.—*Anc. Inst. Eng.*

LAIA.—A roadway in a wood. Mon. Ang. t. 1, p. 483.

LAIOUS.—A layman. One who is not in holy orders, or not engaged in the ministry of religion.

LAID OUT, (in a statute). 1 Serg. & R. (Pa.) 487.

LAIRWITE, or **LAIRESITE**.—A fine for adultery or fornication, anciently paid to the lords of some manors. 4 Inst. 206.

LAITY.—The people as distinguished from the clergy. There is no legal division of the people into clergy and laity in the United States. See **LAYMAN**.

LAMBETH DEGREES.—Degrees conferred by the Archbishop of Canterbury. See **CANTERBURY, ARCHBISHOP OF**.

LAME DUCK.—A cant term on the stock exchange for a person unable to meet his engagements.

LAMMAS LANDS.—Open, arable and meadow lands in England, which are held by a number of owners in severalty during a portion of the year, and which after the severalty crop has been removed are commonable not only to the owners in severalty but to other classes of commoners, *e. g.* inhabitants of the parish, tenants and inhabitants of a manor, freemen or householders of a borough, or the owners or occupiers of ancient tenements within the parish, usually termed "tofts." (Cooke Incl. 47; Elt. Com. 36. See, also, Baylis v. Tyssen-Amhurst, 6 Ch. D. 500.) They derive their name from the former practice of keeping them open from lammas day (Aug. 1) to lady day next ensuing. (Elt. Com. 36.) The date of opening them is now August 12. Stat. 24 Geo. II. c. 23. See **COMMON**, §§ 7, 18.

LANCASTER.—See **DUCHY OF LANCASTER**.

LANCETI.—Vassals who were obliged to work for their lord one day in the week, from Michaelmas to autumn, either with fork, spade, or flail, at the lord's option.—*Spel. Gloss.*

LAND.—

§ 1. In its technical sense, as a word of description in conveyancing, pleading, &c., land "comprehendeth any ground, soile or earth whatsoever; as meadows, pastures, woods, moores, waters, marishes, furses and heath. It legally includeth also all castles, houses and other buildings; for castles, houses, &c., consist upon two things, viz., land or ground, as the foundation, and* [the] structure thereupon, so as passing the land or ground, the structure or building thereupon passeth therewith. Also . . . waters . . . are not by that name demandable in a *præcipe* (*i. e.* an action for the recovery of land); i. e. the land whereupon the water floweth or standeth is demandable; as for example, *viginti acras terræ aquâ coopertas* (twenty acres of land covered with water). And lastly the earth hath in law a great extent upwards, not only of water, as hath been said, but of ayre [air] and all other things even up to heaven, for *cujus est solum ejus est usque ad cælum*." Co. Litt. 4a; 2 Bl. Com. 18; Dart Vend. 89.

§ 2. Land is divisible both horizontally (see **CLOSE**) and vertically. Therefore, one man may be entitled to the surface of land, and another to the minerals under it (see **EASEMENT**, § 1); or one man may have a fee-simple in one story of a house, while the rest may belong to another.

*In Hargrave's edition "and" is wrongly printed "or."

§ 3. Land is a tenement and a hereditament, and, therefore, belongs to the class of real property. See HEREDITAMENT; REAL PROPERTY; TENEMENT.

§ 4. Rights in respect of land are of two kinds—(1) rights of ownership, although theoretically land is not the subject of ownership according to English law (see ESTATE, § 2; TENURE); and (2), rights in *alieno solo*, which include easements and profits (*q. v.*)

§ 5. In the old books, and in fines and the like, "the word 'land' strictly doth signify nothing but arable land." (Shep. Touch. 92; Co. Litt. 19 b.) the reason given being that arable land was considered more beneficial to the country than pasture. 2 Inst. 86. See EJECTMENT; LANDLORD AND TENANT; POSSESSION; SEISIN; VENDORS AND PURCHASERS.

LAND, (defined). 53 Cal. 373; 5 Conn. 517; 9 Id. 377; 5 Day (Conn.) 467; 28 Barb. (N. Y.) 336; 2 Bl. Com. 18; 1 Chit. Gen. Pr. 179.

— (includes what). 120 Mass. 157; 45 N. H. 313; 3 C. E. Gr. (N. J.) 94; 23 Barb. (N. Y.) 336; 1 Den. (N. Y.) 550; 2 Hill (N. Y.) 342; 1 N. Y. 564, 569; 36 Ohio St. 276, 281; 4 Watts (Pa.) 109; 4 Bing. 90; 8 Dowl. & Ry. 549; 1 Dyer 47 a; 2 Chit. Gen. Pr. 50 app.

— (when includes fishery). Wilberf. Stat. L. 130.

— (when does not include tithes). Wilberf. Stat. L. 298.

— (what is acquired with). 2 Crompt. & J. 126.

— (sale of, does not pass growing grain). 1 Pa. 471.

— (can not be appendant to other land). 1 Com. Dig. 652.

— (can not be appurtenant to a messuage). 4 Yeates (Pa.) 146.

— (in a deed). 2 Johns. (N. Y.) 440; 1 N. Y. 564, 569.

— (in a lease). 3 Doug. 70; Plowd. 170; Com. L. & T. 75.

— (in a mortgage). 1 Leigh (Va.) 297.

— (in mechanics' lien act). 48 Ill. 481.

— (in road act). 2 Zab. (N. J.) 293.

— (in a statute). 14 Bush (Ky.) 1; 2 Hill (N. Y.) 342; 7 Heisk. (Tenn.) 65, 82; L. R. 8 Q. B. 7.

— (in a will). 2 Mass. 58; 1 Sax. (N. J.) 4; 5 Den. (N. Y.) 321; 8 Serg. & R. (Pa.) 239; 3 Atk. 460; 3 P. Wms. 55; 1 Myl. & K. 571; 1 W. Bl. 255.

LAND, ALL, (in a deed). 1 H. Bl. 25.

LAND AND ESTATE, (in a will). 2 P. Wms. 524.

LAND AND REAL ESTATE, (in a statute). 12 Vr. (N. J.) 345.

LAND CERTIFICATE.—Upon the registration of freehold land under the English

Land Transfer Act, 1875, a certificate is given to the registered proprietor; and similarly upon every transfer of registered land. This registration supersedes the necessity of any further registration in the register counties. See *ante* p. 186, n. (9).

LAND COVERED WITH WATER, (in tax act). L. R. 6 Q. B. 669

LAND, ESTATE IN, (equity of redemption is). 1 Atk. 605.

LAND IN A TOWN, (in land clauses act). L. R. 3 Ch. 377.

LAND, INTEREST IN, (in statute of frauds). 1 Den. (N. Y.) 550.

LAND OFFICE, (what is the). 1 Serg. & R. (Pa.) 534.

LAND OR REAL ESTATE, (in a will). South. (N. J.) 278.

LAND, REAL ESTATE AND REAL PROPERTY, (in 1 Rev. Stat. 388, § 3). 39 N. Y. 81.

LAND REEVE.—A person whose business it is to overlook certain parts of a farm or estate in England; to attend not only to the woods and hedge timber, but also to the state of the fences, gates, buildings, private roads, driftways and water-courses; and likewise to the stocking of commons, and encroachments of every kind, as well as to prevent or detect waste and spoil in general, whether by the tenants or others, and to report the same to the manager or land-steward.—*Encycl. Lond.*

LAND REGISTRIES.—

§ 1. These registries for officially recording the title to, dealings with and charges on land* are managed in England on two principles, namely, as registries of title and registries of assurances.

§ 2. A registry of title is an authentic and self-explanatory record of the state of the title to the land registered on it; that is to say, a piece of land appears on the register as belonging to A. B., and if it is subject to a mortgage or charge in favor of C. D., that also would appear.

§ 3. A registry of assurances or deeds, on the other hand, merely contains a statement of the existence of documents or assurances affecting the title to the land, by giving either a transcript or an epitome of each document, (see MEMORIAL,) leaving the persons concerned to draw their own conclusions as to the effect of those documents on the title to the land.

As regards the district over which they extend, registries are of two kinds, general and local—

§ 4. General.—A general land registry for England and Wales was established by the Stat. 25 and 26 Vict. c. 53 ("Lord Westbury's Act"), but owing to the fact that it imposed on persons desirous of making use of it the necessity of showing a marketable title to, and defining the boundaries of the land to be registered, (both expensive and tedious, and in many cases impossible, processes,) the act was practically a failure,

*As to the theory of registration generally, see Mark. El. L., § 478.

(Report of Land Transfer Commissioners, 1869, cited in Char. R. P. Stat. 116.) and is no longer in operation, except as to land already registered under it. Land Transfer Act, 1875, § 125; Dart Vend. 1142.

§ 5. The present act regulating the general registration of land is the Land Transfer Act, 1875, which created an office of land registry in London, consisting of a registrar, assistant registrars, &c., and, supplemented by the general rules made under it, provides (1) for the voluntary registration in six manners of existing titles to freehold land, and also leasehold land held on terms of a certain length (but not copyholds or customary freeholds); also, of incorporeal hereditaments of freehold tenure, mines, fee-farm grants, &c.; (2) for the transfer of registered land (*see* TRANSFER); (3) for the creation and transfer of charges on registered land (*see* CHARGE, § 6); (4) for the registration of titles, rights and interests to or in registered land acquired in consequence of the death, marriage, bankruptcy, &c., of a registered proprietor; (5) for the registration of notices as to the existence of leases and estates in dower or by the curtesy, and (6) for the protection of rights arising from unregistered dealings with registered land. (*See* CAUTION; RESTRICTION.) The act is not believed to have been put in force to any great extent.

§ 6. Local land registries are for the registration of land within defined districts. By the Land Transfer Act, 1875, power is given to the lord chancellor to create district registries for the registration (under the act) of land within defined districts. (§ 118.) No such district registries have yet been created, (Char. R. P. Acts, 284,) but local land registries, on the principle of registration of assurances, (*supra*, § 3,) exist in Middlesex, in each of the three ridings of Yorkshire, and in the Bedford Level. As soon as land in any of these districts is registered in the general Land Registry, it becomes exempt from the jurisdiction of the local registry. Land Transfer Act, 1875, § 127.

LAND REVENUES OF THE CROWN.—The greatest part of these have been from time to time granted by successive sovereigns to lords of manors and others, who now, for the most part, hold the prerogative rights of estrays, waifs, &c., as their own absolute property. These grants have greatly impoverished the patrimony of the crown. An act was passed in the reign of Queen Anne, whereby it was declared that all future grants or leases by the Crown for any longer term than thirty-one years, or three lives, should be void. (1 Anne Stat. 1 c. 7, amended and continued by the 34 Geo. III. c. 75.) At the commencement of the reign of George III. the hereditary revenues of the crown, arising from renewals, fines, unclaimed estrays, escheats from manors held *in capite*, and such like, being very uncertain, with all other hereditary revenues, were given up by the king to the aggregate funds; and in lieu thereof, he received £800,000 a year for the maintenance of his civil list. (1 Geo. III. c. 1.) By subsequent acts (34 Geo. III. c. 57; 48 Geo. III. c. 73; 52 Geo. III. c. 161,) these hereditary revenues were put under the

management of commissioners, styled "Commissioners of His Majesty's Woods, Forests, and Land Revenues." This arrangement was confirmed by 1 Geo. IV. c. 1. (*See* 14 and 15 Vict. c. 42, and 29 and 30 Vict. c. 62.) By 1 Vict. c. 2, the amount granted for the support of the queen's household, and of the honor and dignity of the crown, &c., is £385,000. *See* CIVIL LIST. As to crown lands, *see* DEMESNE.

LAND STEWARD.—A person who overlooks or has the management of a farm or estate.

LAND TAX.—

§ 1. A tax payable annually, in England, in respect of the beneficial ownership of land. If land subject to the tax is in lease, the tenant is primarily liable to pay the whole tax, but he is entitled (unless he has expressly agreed to pay it himself) to deduct from the rent so much of the tax as the landlord ought to bear in respect of the rent, so that if the rent is a rack-rent the landlord bears the whole tax. *See* Ward v. Const, 10 Barn. & C. 635, and other cases cited 2 Steph. Com. 559 n. (g).

§ 2. **Assessment.**—The tax was originally levied annually at so much in the pound, but was afterwards imposed in fixed amounts on the various counties, boroughs, cities, towns and liberties in England; and these amounts were distributed or assessed at so much in the pound on the lands, tenements, and hereditaments in each county, borough, &c., by commissioners appointed for the purpose. Stat. 38 Geo. III. c. 5.

§ 3. **Redeemable.**—By Stat. 38 Geo. III. c. 60, the land tax was made redeemable. In ordinary cases the redemption is effected by the transfer to the national debt commissioners of so much consols or reduced three per cent. annuities as will yield a dividend exceeding the amount of the tax by one-tenth part of it. Stats. 42 Geo. III. c. 116, § 22 *et seq.*; 1 and 2 Vict. c. 58; 24 and 25 Vict. c. 91.

LAND TENANT (commonly called *terre tenant*).—He who actually possesses the land.

LAND TRANSFER ACT.—*See* LAND REGISTRIES, § 5.

LAND WAITER.—An officer of the custom-house, whose duty is, upon landing any merchandise, to examine, taste, weigh, or measure it, and to take an account thereof. In some ports they also execute the office of a coast-waiter. They are likewise occasionally styled *searchers*, and are to attend and join with the patent searcher in the execution of all cockets for the shipping of goods to be exported to foreign parts; and in cases where drawback on bounties are to be paid to the merchant on the exportation of any goods, they, as well as the patent searchers, are to certify the shipping thereof on the debentures.—*Encycl. Lond.*

LANDA.—An open field; a field cleared from wood.—*Blount; Cowell.*

LANDAGENDE, LANDHLAFORD, or LANDRICA.—A proprietor of land; lord of the soil.—*Anc. Inst. Eng.*

LANDBOC.—The deed or charter by which lands were held.—*Spel. Gloss.*

LANDCHEAP.—A fine paid in some places on the alienation of lands.—*Cowell.*

LANDEA.—A ditch, in marshy lands, to carry water into the sea.—*Du Cange.*

LANDED, (in a statute). 8 Cranch (U. S.) 110; L. R. 4 Ex. 260.

LANDED ESTATE, (what constitutes). 10 La. Ann. 676.

— (in a will). 12 Wend. (N. Y.) 602; 2 McCord (S. C.) Ch. 264.

LANDED PROPERTY, (in a will). Adams (N. H.) 103; 4 Wheel. Am. C. L. 385.

LANDED SAFELY, (in an insurance policy). 6 Mass. 204.

LANDED SECURITIES, (included in "real securities"). 3 Atk. 808.

LANDEFRICUS.—A landlord; a lord of the soil.

LANDEGANDMAN.—An inferior tenant of a manor.—*Spel. Gloss.*

LANDGABEL.—A tax or rent issuing out of land. Spelman says, it was originally a penny for every house. This *landgabel* or *land-gavel*, in the register of Domesday, was a quit-rent for the site of a house, or the land whereon it stood, the same as what we now call ground-rent.—*Wharton.*

LANDGRAVE.—A name formerly given to those who executed justice on behalf of the German emperors, with regard to the internal policy of the country. It was applied, by way of eminence, to those sovereign princes of the empire who possess by inheritance certain estates called "*land-gravates*," of which they received investiture from the emperor.—*Encycl. Lond.*

LANDIMERS.—Measures of land.—*Cowell.*

LANDING, (defined). 74 Pa. St. 373.

LANDING PLACE, (what is). 1 Greenl. (Me.) 111; 2 Pick. (Mass.) 44.

— (in a statute). 20 Wend. (N. Y.) 131.

LANDIRECTA.—Rights which charged the land whoever possessed it. See *TRINODA NECESSITAS*.

LANDLOCKED.—An expression sometimes applied to a piece of land belonging to one person and surrounded by land belonging to other persons, so that it cannot be approached except over their land. *Corporation of London v. Riggs*, 13 Ch. D. 798. See *EASEMENT*, § 7 *et seq.*

LANDLORD.—He of whom lands or tenements are holden, who has a right to distrain for rent in arrear, &c. Co. Litt. 57. See *DISTRESS*; *NOTICE TO QUIT*; *RENT*.

LANDLORD, (who is). 39 N. Y. 147, 151.
— (in ejectment case). 3 Gilm. (T. 621.

LANDLORD AND TENANT.—

§ 1. The relation of landlord and tenant is created by one person (the landlord) allowing another (the tenant) to occupy the landlord's house or land for a consideration termed "rent," recoverable in England, and a few of the States, by distress, and elsewhere by action the same as any other debt. Woodf. Land. & T. lxvi.

§ 2. In the absence of express agreement, the landlord impliedly contracts with the tenant to give him possession and guarantee him against eviction by any person having a title paramount to that of the landlord. On the other hand the tenant impliedly contracts with the landlord to pay the rent, not to commit waste, and to give up possession at the end of the tenancy. (Woodf. Land. & T. lxviii. See, also, Fawc. Land. & T.; Sm. Land. & T.; Chit. Cont. 286 *et seq.*; Wats. Comp. Eq. 474.) Usually, however, the tenancy is regulated by the terms of a document called a "lease" (*q. v.*) See *DISTRESS*; *FIXTURES*; *NOTICE TO QUIT*; *RENT*; *SUMMARY PROCEEDINGS*; *TERM*.

LANDMAN.—A terre-tenant.—*Cowell*

LAND-MARK.—An object or monument (*q. v.*) fixing the boundary of an estate or piece of property.

LAND-POOR, (defined). 46 Mich. 397.

LANDS, (synonymous with "estate"). 5 Baxt. (Tenn.) 640.

— (in New York revised statutes). 82 N. Y. 459.

— (in lands clauses act). L. R. 6 Q. B. 422.

— (in a statute). 6 Barn. & C. 720; 3 Co. 8a; 12 East 337, 338.

— (in a will). 17 Barb. (N. Y.) 25, 86; 10 Paige (N. Y.) 140; 1 Atk. 560; 4 Barn. & Ad. 771; 9 East 461; 110b. 2, 4 n.; L. R. 9 Ch. 174; 2 Ld. Raym. 834; 3 P. Wms. 20; T. Raym. 97.

LANDS, ALL, (in a statute). 3 Pa. 107.

LANDS, ALL HIS, NOT BEFORE DEVISED, (in a will). 2 Vern. 461.

LANDS, ALL HIS OTHER, (in a will). Cro. Eliz. 476.

LANDS, ALL MY, (in a will). 3 Cranch (U. S.) 131; 6 East 628; 1 Eq. Abr. 211; 4 Gilb. 137; Moo. 359, 873; 3 P. Wms. 322; 3 T. R. 502; 1 Vern. 3; 4 Com. Dig. 154.

LANDS AND MANSION HOUSE, (in a will). 15 B. Mon. (Ky.) 73.

LANDS AND TENEMENTS, (includes what). 11 Mod. 104.

— (in a deed). 1 Yeates (Pa.) 429 n.

LANDS AND TENEMENTS, ALL MY, (in a will). 4 Wheel. Am. C. L. 383.

LANDS AND TENEMENTS, ALL MY, WHEREVER SITUATED, (in a grant). 10 Paige (N. Y.) 140.

LANDS AND TENEMENTS OF THE DEBTOR, (in § 421 of the Code). 31 Ohio St. 175.

LANDS CLAUSES CONSOLIDATION ACT, 1845.—This is the Stat. 8 and 9 Vict. c. 18, and is in general incorporated (or some specified portions thereof) are incorporated in every act (called "special act"), passed to authorize some undertaking of a public character, and for the effectuating of whose objects lands must be acquired. The act provides for the purchase of lands by agreement between the promoters of the undertaking and the owners of the lands required to be taken; and also for the acquisition of the necessary lands by means other than agreement, in which latter case the amount of the compensation for the lands taken is to be settled either by the verdict of a jury or by arbitration. In the case of persons under disability or absent from the kingdom, valuation is the mode of ascertaining their proportion of the purchase or compensation money. Usually the costs are borne by the promoters. The act provides forms of conveyance to the promoters, and the execution of such conveyances has the effect of vesting in the promoters the fee-simple of the lands purporting to be thereby conveyed, free of all terms of years, and of all tails, and other qualifications whatsoever; but conveyances of copyhold lands must (like other conveyances of such lands) be enrolled on the court rolls, and must be thereafter enfranchised. The promoters may also redeem mortgages on the lands purchased or taken, and may procure the release of rent charges and the surrender of leases, upon such terms as they can agree upon, or (failing agreement) as can be settled by the verdict of a jury, or by arbitration in the usual way. Superfluous lands may be sold by the promoters, the original owner thereof having the option of repurchase, and after him the nearest adjoining owners, unless the land is situate within a town, or is building land, or land built upon.—*Brown*.

LANDS IN POSSESSION, FREEHOLD, (in articles of marriage settlement). Cas. t. Talb. 80.

LANDS LYING NEAR CANAL, (in poor rate law). L. R. 6 Q. B. 173.

LANDS OF A LIKE QUALITY, (in canal company's special act). 3 Q. B. D. 73.

LANDS, TENEMENTS AND HEREDITAMENTS.—The technical and most comprehensive description of real property, as "goods and chattels" is of personality. Wms. Real Prop. 5. See HEREDITAMENT; LAND; TENEMENT.

LANDS, TENEMENTS AND HEREDITAMENTS, (in tax act). Wilberf. Stat. L. 180.

— (in a will). 3 Bro. Ch. 99; 2 Vern. 559, 580, 625, 687.

LANDS, TENEMENTS AND HEREDITAMENTS, (copyholds are included under). Cro. Car. 42.

— (does not comprehend an equitable estate). 3 Hayw. (N. C.) 61.

LANDS USED FOR BUILDING PURPOSES, (in land clauses act). L. R. 3 Ch. 377.

LANES, (in a statute). 12 Allen (Mass.) 77.

LANGEMAN.—A lord of a manor. 1 Inst. 5.

LANGEOLOM.—An undergarment made of wool, formerly worn by the monks, which reached to their knees. Mon. Angl. 419.

LANGUIDUS.—Sick; in ill health. A return made by a sheriff to a writ, when the removal of a person in his custody would endanger his life.

LANGUISHING, (in return to *habeas corpus*). 2 Tyler (Vt.) 269.

LANGUISHING, DID LIVE, (in an indictment). Add. (Pa.) 173.

LANIS DE ORESCENTIA WALLÆ TRADUCENDIS ABSQUE CUSTUMA, &c.—An ancient writ that lay to the customer of a port to permit one to pass wool without paying custom, he having paid it before in Wales.—*Reg. Orig.* 279.

LANO NIGER.—A sort of base coin, formerly current in England.—*Cowell*.

LAPIDATION.—The act of stoning a person to death.

LAPIS MARMORIUS.—A marble stone about twelve feet long and three feet broad, placed at the upper end of Westminster hall, where was likewise a marble chair erected on the middle thereof, in which the English sovereigns anciently sat at their coronation dinner, and at other times the lord chancellor.

LAPSE.—

§ 1. Devise, or legacy.—As a general rule, when a person to whom property has been devised or bequeathed dies before the testator, the devise or bequest fails or lapses, and the property goes as if the gift had not been made; consequently, if a testator bequeaths \$100 to A., (or to A., "his executors or administrators,") and the residue of his property to B., then, if A. dies during the life-time of the testator, the legacy lapses and falls into the residue, *i. e.* it goes to B. on the testator's death. (Wms. Ex. 1118; Wats. Comp. Eq. 1196) There are, however, some exceptions to the rule. Thus, if property is given to several persons as joint tenants, on the death of one during the life-time of the testator the whole goes to the survivors. And if land is given to a person in tail who

dies before the testator, leaving issue capable of taking under the entail, the land goes as if the devisee had died immediately after the testator. (Stat. 1 Vict. c. 26, § 32.) And if a testator bequeaths (or devises) property to a child or other descendant of himself, and the legatee dies leaving issue, who survive the testator, the legacy (or devise) does not lapse, but takes effect as if the legatee had died immediately after the testator. *Id.* § 33.

§ 2. **Benefice.**—In ecclesiastical law, a lapse occurs when a benefice becomes void and the patron neglects to present within six months after the avoidance. In such a case the patronage devolves from the patron to the bishop, and on his neglect to the metropolitan, and on his neglect to the crown. Phillim. Ecc. L. 487.

§ 3. In criminal proceedings, "lapse" is used, in England, in the same sense as "abate" in ordinary procedure, *i. e.* to signify that the proceedings came to an end by the death of one of the parties, or some other event. The death of the complainant or prosecutor does not cause a lapse. *Reg. v. Truelove*, 5 Q. B. D. 336.

LAPSE PATENT.—A patent issued to petitioner for land. A patent for which land to another party has lapsed through neglect of patentee. The lapse patent relates to date of original patent, and makes void all mesne conveyances. (1 Wash. (Va.) 39, 40.)—*Bouvier*.

LAPSED DEVISE.—*See LAPSE*, § 1.

LAPSED LEGACY.—*See LAPSE*, § 1.

LARCENY.—**NORMAN-FRENCH:** *larcyn*, (Britt. 22a); **LATIN:** *latrocinium*.

§ 1. The wrongful or fraudulent taking and carrying away, without color of right, of the personal goods of another from any place, with a felonious intent to convert them to his (the taker's) own use, and make them his own property, without the consent of the owner. (2 Russ. Cr. 123.) This is sometimes called "simple larceny," to distinguish it from larceny in a dwelling-house, larceny from the person, (*see ROBBERY*), larceny of horses, cattle, &c., and other varieties of larceny, which are subject to special punishments. Simple larceny is punishable by imprisonment under the statutes of the several States, and in England with penal servitude for three years, or imprisonment for two years with or without hard labor, solitary confinement and whipping. Stat. 24 and

25 Vict. c. 96, *passim*; Greaves Crim. Acts 98 *et seq.* As to summary convictions for larceny, *see* Stone Just. 350, 360.

§ 2. In some jurisdictions, larceny is distinguished as grand or petty, according as the value of the property does or does not exceed a stated sum. This was abolished in England by Stat. 24 and 25 Vict. c. 96, § 2. 4 Steph. Com. 119. *See* ANIMALS, § 2; EMBEZZLEMENT; GRAND LARCENY.

LARCENY, (defined). 8 Port. (Ala.) 463; 22 Conn. 156; 23 Ind. 21; 7 Gray (Mass.) 43; 6 Coldw. (Tenn.) 524.

— (what constitutes). 5 Cranch (U. S.) C. C. 493; 1 McAll. (U. S.) 196; 24 Cal. 14; 28 *Id.* 380; 26 Ind. 101; 57 *Id.* 341; 46 Iowa 116; 1 Hun (N. Y.) 19; 12 Hun (N. Y.) 127; 53 N. Y. 111; 67 *Id.* 322; 3 Thomp. & C. (N. Y.) 82; 3 Park. (N. Y.) Cr. 579; 2 Brewst. (Pa.) 570; 37 Tex. 337; 10 Wash. L. Rep. 117.

— (what is not). 8 Port. (Ala.) 461; 57 Ind. 102; 9 Nev. 48; 3 Park. (N. Y.) Cr. 579; 36 Tex. 375; 38 *Id.* 643; 14 Cent. L. J. 193; 11 N. W. Rep. 184; 13 Rep. 391; 2 Car. & K. 942; 1 Den. C. C. 370.

— (what is not a charge of). 1 Stew. (N. J.) 141.

LARCENY, SIMPLE, (in Comp. L. § 5765). 10 Mich. 143.

LARDARIUS REGIS.—The king's larderer, or clerk of the kitchen.—*Cowell*.

LARDING MONEY.—In the manor of Bradford, in Wilts, the tenants pay to their lord a small yearly rent by this name, which is said to be for liberty to feed their hogs with the masts of the lord's wood, the fat of a hog being called "lard." Or it may be a commutation for some customary service of carrying salt or meat to the lord's larder.—*Wharton*.

LARGE LETTERS, (in a statute). 3 Pick. (Mass.) 342.

LARGE WITHOUT A KEEPER, AT, (in revised statutes, ch. 23, § 2). 63 Mo. 468.

LARGER PORTION OF THE TWELVE MONTHS, (explained). 12 R. I. 339.

LARONS.—Thieves.

LASCIVIOUS CARRIAGE, (defined). 5 Day (Conn.) 81.

LASHITE, or LASHLITE.—A kind of forfeiture during the government of the Dunes in England.—*Encycl. Lond.*

LAST.—A burden; a weight or measure of fish, corn, wool, leather, pitch, &c.

LAST COURT.—A court held by the twenty-four jurors in the marshes of Kent, and summoned by the bailiffs, whereby orders are made to lay and levy taxes, impose penalties, &c., for the preservation of the said marshes.—*Encycl. Lond.*

LAST HEIR.—In English law, he to whom lands come when they escheat for want of lawful heirs; *i. e.* sometimes the lord of whom the lands were held; sometimes the crown.—*Cowell*.

LAST ILLNESS, (what is). 17 Serg. & R. (Pa.) 330, 331.

LAST LEGAL SETTLEMENT, (in a statute). 17 Johns. (N. Y.) 41.

LAST PAST, (in an indictment). 7 East 389.
— (in an information). 2 Chit. Gen. Pr. 162, 163.

— (in a lease). 5 Halst. (N. J.) 102.

LAST RESORT.—A court from which there is no appeal is called the court of last resort.

LAST SICKNESS, (what is). 8 Me. 167.

— (in a statute). 20 Johns. (N. Y.) 502, 514.

LAST WILL, (defined). Hob. 249.

LASTAGE, or **LESTAGE.**—A custom exacted in some fairs and markets to carry things bought whither one will. But it is more accurately taken for the ballast or lading of a ship. Also, custom paid for wares sold by the last, as herrings, pitch, &c.

Lata culpa dolo æquiparatur: Gross negligence is tantamount to fraud. This maxim is only another form of the English one, "Every man is taken to intend that which is the natural consequence of his actions."

LATCHING.—An underground survey.

LATE, (in an affidavit, as applied to residence). 11 East 528

— (in an indictment). 3 Car. & P. 415 n.; Russ. & Ry. C. C. 415; 4 T. R. 541; 1 Chit. Cr. L. 209, 210; Stark. Cr. Pl. 55.

— (in a will). 12 Ves. 280.

— (construed to mean "existing not long ago"). 17 Ala. 190.

LATE A RESIDENT OF THIS PLACE, (construed). 7 Cal. 215.

LATE CONSTABLE, (in state of demand). 1 Harr. (N. J.) 47.

LATE SHERIFF, (in a *venire facias*). Cro. Car. 570.

— (indorsed on the return of a writ). Cro. Car. 189.

LATE THE HUSBAND OF, (in an indictment). Dyer 46 b.

LATE THE PROPERTY OF, (in a deed). 3 Pa. 328.

LATELY, (relates backward, how far). 2 Show. 294.

LATENT AMBIGUITY.—See **AMBIGUITY**.

LATENT AMBIGUITY, (defined). 3 Halst. (N. J.) 72; 7 Id. 809.

— (what is not). 10 Ohio St. 534.

LATENT DEED, (defined). 2 Halst. (N. J.) 175.

LATERA.—Sidesmen; companions; assistants.

LATERAL MOTION, (in description of a patent) 3 McLean (U. S.) 432, 443.

LATERARE.—To lie sideways, in opposition to lying endways, used in descriptions of lands.

LATHE.—A division or district of a county, consisting of three or four hundreds. They only occur in Kent under this name; but they also occur in Sussex under the name of rapes. 1 Steph. Com. 127. See **COUNTY**; **HUNDRED**.

LATHREEVE, **LEDGREEVE**, or **TRITHIN-GREVE.**—An officer under the Saxon government, who had authority over a lathe.—*Cowell*.

LATIFUNDIUM.—In the civil law, great or large possessions; a great or large field; a common. (Ainsw.) A great estate made up of smaller ones (*fundus*), which began to be common in the latter times of the empire. (Schmidt Civ. Law, Introd. p. 17.)—*Bowrier*.

LATIFUNDUS.—An owner of a large estate made up of smaller ones.—*Du Cange*.

LATIMER.—An interpreter, according to Coke. (2 Inst. 515.) It is suggested that it should be *latiner*, because he who understood Latin might be a good interpreter. Camden makes it signify a Frenchman or interpreter.—*Wharton*.

LATIN.—The language of the ancient Romans. There are three sorts of law Latin: (1) Good Latin, allowed by the grammarians and lawyers. (2) False or incongruous Latin, which in times past would abate original writs; though it would not make void any judicial writ, declaration, or plea, &c. (3) Words of art, known only to the sages of the law, and not to grammarians, called "lawyers' Latin." (1 Lit. Abr. 146.) But proceedings are now written in English. (4 Geo. II. c. 28.)—*Wharton*.

LATINARIUS.—An interpreter of Latin.

LATINI JUNIANI.—In the Roman law, a class of freedmen (*libertini*) intermediate between the two other classes of freedmen called respectively "*Cives Romani*" and "*Dediticii*." Slaves under thirty years of age at the date of their manumission, or manumitted otherwise than by *vinicta*, *census*, or *testamentum*, or not the quiritary property of their manumissors at the time of manumission, were called "*Latini*." By reason of one or other of these three defects, they remained slaves by strict law even after their manumission, but were protected in their liberties first by equity, and eventually by the *Lex Junia Norbana*, A. D. 19, from which law they took the name of *Juniani* in addition to that of *Latini*.—*Brown*

LATITAT.—He lies hid. A writ, whereby all persons were originally summoned to answer

in personal actions in the Queen's Bench; so called because it is supposed by the writ that the defendant lurks and lies hid, and cannot be found in the county of Middlesex (in which the court is holden) to be taken by bill, but has gone into some other county, to the sheriff of which this writ was directed to apprehend him there. (*F. N. B.* 78; *Termes de la Ley*; 2 Bl. Com. 286.) Abolished by the 2 Will. IV. c. 39.

LATOR.—A bearer; a messenger.

LATRO.—A thief; a robber.

LATROCINATION.—The act of robbing; a depredation.

LATROCINIUM.—The prerogative of adjudging and executing thieves; also, larceny, theft; a thing stolen.

LATROCINY.—Larceny.

LATTER-MATH.—A second mowing; the after-math (*q. v.*)

LATTER PART OF THE MONTH, (means what). 4 Ind. 488.

LAUDARE.—To advise or persuade; to arbitrate.

LAUDATIO.—Testimony delivered in court concerning an accused person's good behavior and integrity of life. It resembles the practice which prevails in our trials, of calling persons to speak to a prisoner's character. The least number of the *laudatores* among the Romans was ten.—*Wharton*.

LAUDATOR.—An arbitrator.

LAUDEMIO.—In the Roman law, a fine payable to the *dominus* upon any alienation of his emphyteusis by the emphyteuta to a purchaser, such purchaser not being the *dominus* himself. It is very similar to the fine paid by a copyholder to his lord upon an alienation of the copyhold tenement.—*Brown*.

LAUDUM.—An arbitrament or award.—*Wals.*

LAUGHEE.—Frank-pledge. 2 Reeves Hist. Engl. L. 17.

LAUNCEGAY.—A kind of offensive weapon, now disused, and prohibited by 7 Rich. II. c. 13.

LAUND, or LAWND.—An open field without wood.—*Blount*.

LAUREATE, or LAUREAT.—An officer of the household of the English sovereign, whose business formerly consisted only in composing an ode annually, on the sovereign's birthday, and on the new year; sometimes also,

though rarely, on occasions of any remarkable victory. The annual birthday ode has been discontinued for many years. The title is derived from the circumstance that in classical times, and in the middle ages, the most distinguished poets were solemnly crowned with laurel. From this the practice found its way into English universities; and it is for that reason that Selden, in his *Titles of Honor*, speaks of the laurel crown as an ensign of the degree of mastership in poetry. A relic of the old university practice of crowning distinguished students of poetry exists in the term "Laureation," which is still used at one of the Scotch universities (St. Andrew's) to signify the taking of the degree of Master of Arts.—*Wharton*.

LAURELS.—Pieces of gold, coined in 1619, with the king's head laureated. Hence the name.

LAVATORIUM.—A laundry or place to wash in; a place in the porch or entrance of cathedral churches, where the priest and other officiating ministers were obliged to wash their hands before they proceeded to divine service.

LAW.—SCANDINAVIAN: *lag*; ANGLO-SAXON: *lagu*, NORMAN FRENCH: *ley*. For details as to the history and etymology of the word "law" see two articles by Charles Sweet in the Law Magazine (London) for June and July, 1874.

§ 1. This word is used in two principal senses, the idea common to both of them being uniformity of action. In one sense the name "law" is merely the expression for a uniformity of action which has been observed; as when we speak of the laws of gravitation, or say that crystals are formed according to certain laws; here the law follows from the uniformity. In the other sense, the law produces the uniformity, *i. e.* the law is a rule of action.

§ 2. **Law of nature.**—To this latter class belong the law of nature (using that term in the sense of rules imposed on man by his Maker*) and laws of human origin. Human laws, again, are either (1) social (such as the so-called laws of honor, morality, &c.,) or (2) political, the latter being divisible into (a) international law, and (b) law capable of judicial enforcement, or law in the technical sense of the word. As to international law, see that title.

Law, as the subject of jurisprudence, is used in three senses.

§ 3. **Territorial, or municipal.**—In its widest sense, law is an aggregate of rules enforceable by judicial means in a given

*1 Bl. Com. 39. Rightly called by Austin, (88) "the law of God," to distinguish it from

those natural laws which apply to animals and things.

country. Thus, we speak of the law of England, as opposed to the law of France, or the Roman law. This kind of law is called "territorial," or "municipal" law, to distinguish it from international law (8 Sav. Syst. *passim*), and is of the following kinds:

§ 4. **Judicial precedents—Statutes—Custom.**—With reference to its origin, law is derived either from judicial precedents, from legislation, or from custom. That part of the law which is derived from judicial precedents is called "common law," "equity," or "admiralty," "probate," or "ecclesiastical law," according to the nature of the courts by which it was originally enforced. (See the respective titles.) That part of the law which is derived from legislation is called the "statute law." Many statutes are classed under one of the divisions above mentioned, because they have merely modified or extended portions of it, while others have created altogether new rules. That part of the law which is derived from custom is sometimes called the "customary law," as to which, see **CUSTOM**.

§ 5. **Written, and unwritten.**—The ordinary, but not very useful, division of law into written and unwritten, rests on the same principle. The written law is the statute law, the unwritten law is the common law (*q. v.*) 1 Steph. Com. 40, following Blackstone.

§ 6. **Public—Constitutional—Administrative.**—With reference to its subject-matter, law is either public or private. Public law is that part of the law which deals with the State, either by itself or in its relations with individuals, and is called (1) "constitutional," when it regulates the relations between the various divisions of the sovereign power, and (2) "administrative," when it regulates the business which the State has to do. The most important branches of the latter class are (a) the criminal law and the law for the prevention of crimes; (b) the law relating to education, public health, the poor, &c.; (c) ecclesiastical law, and (d) the law of judicial procedure—courts of law, evidence, &c.

§ 7. **Private, or civil.**—Private or civil law deals with those relations between individuals with which the State is

not directly concerned, as in the relations between husband and wife, parent and child, and in the various kinds of property, contracts, torts, trusts, legacies, the rights recognized by the rules of admiralty law, &c. (See **ADMIRALTY**; **COMMON LAW**; **EQUITY**.) Even here, however, the courts take cognizance, to a certain extent, of the indirect effects of private conduct on the community in general; they accordingly refuse to sanction contracts which are immoral, or in restraint of trade or marriage, or are otherwise against public policy. See **PUBLIC POLICY**.

§ 8. **Substantive, and adjective.**—Law is also divided by the Benthamite school into substantive and adjective. Substantive law is that part of the law which creates rights and obligations, while adjective law provides a method of enforcing and protecting them. In other words, adjective law is the law of procedure. Holl. Jur. 61, 238.

§ 9. In a narrower sense, "law" signifies a rule of law, especially one of statutory origin; and hence,

§ 10. In its narrowest sense, "law" is equivalent to "statute," as when we speak of the poor laws, the corn laws, &c.

As to the distinction between law and fact, see **FACT**.

LAW, (in a statute). 19 Abb. (N. Y.) Pr. 416. — (when customs become). 1 Root (Conn.) Introduction XII.; 2 Nott & M. (S. C.) 9.

LAW AGENTS.—By the 36 and 37 Vict. c. 63, the law relating to law agents (solicitors) practicing in Scotland is amended, and new provisions are made in regard to their admission.

LAW ARBITRARY.—Opposed to *immutable*, a law not founded in the nature of things, but imposed by the mere will of the legislature.

LAW BURROWS.—In the Scotch law, security for peaceable behavior; security to keep the peace. Properly, a process for obtaining such security.—*Bell Dict.*

LAW, COMMON, (in United States constitution). 3 Pet. (U. S.) 447.

— (on the subject of interest). 5 Cow. (N. Y.) 632.

— (in a statute). 8 Pick. (Mass.) 316.

LAW COURT OF APPEALS.—An appellate tribunal, in South Carolina,

for hearing appeals from the courts of law.—*Bourier*.

LAW DAY, (what is). 24 Ala. 149; 10 Conn. 280; 21 N. Y. 343, 345, 365, 367.

LAW FRENCH—The Norman-French language, introduced into England by William the Conqueror, and which, for several centuries, was, in an emphatic sense, the language of the English law, being that in which the proceedings of the courts and of parliament were carried on, and in which many of the ancient statutes, reports, abridgments and treatises were written and printed.

LAW LATIN.—See **LATIN**.

LAW LIST.—An annual English publication of a quasi-official character, comprising various statistics of interest in connection with the legal profession. It includes (among other information) the following matters: A list of judges, queen's counsel, and sergeants-at-law; the judges of the county courts; benchers of the inns of court; barristers, in alphabetical order; the names of counsel practicing in the several circuits of England and Wales; London attorneys; country attorneys; officers of the courts of chancery and common law; the magistrates and law officers of the city of London; the metropolitan magistrates and police; recorders; county court officers and circuits; lord lieutenants and sheriffs; colonial judges and officers; public notaries.—*Mozley & W.*

LAW LORDS.—Peers in the British parliament who have held high judicial office, or have been distinguished in the legal profession.—*Mozley & W.*

LAW MARTIAL.—The military law.

LAW MERCHANT.—One of the branches of the unwritten or common law, consisting of a particular system of customs used only among one set of the people, which, however different from the general rules of the common law, is yet engrafted into it, and made a part of it, being allowed for the benefit of trade to be of the utmost validity in all commercial transactions, upon the maxim "*cuiuslibet in sua arte credendum est*." This law of merchants comprehends the laws relating to bills of exchange, mercantile contracts, sale, purchase and barter of goods, freight, insurance, &c. See **CUSTOM**, § 6.

LAW MERCHANT, (is part of the common law of England). 1 Blackf. (Ind.) 81; 1 South. (N. J.) 20.

—— (court will take notice of). 7 Mass. 44.

—— (rights of principal and factor are governed by). 4 Rawle (Pa.) 211.

LAW, MUNICIPAL, (defined). 1 Bl. Com. 75; 1 Kent Com. 447.

LAW OF ARMS.—The ordinances regulating proclamations of war, leagues and treaties, &c.

LAW OF CITATIONS.—In the Roman law, an Act of Valentinian, passed 426 A. D., providing that the writings of only five jurists, viz., Papinian, Paul, Gaius, Ulpian and Modestinus, should be quoted as authorities. The majority was binding on the judge; if they were equally divided, the opinion of Papinian was to prevail, and in such a case if Papinian was silent upon the matter, then the judge was free to follow his own view of the matter.—*Brown*.

LAW OF EVIDENCE.—See **EVIDENCE**.

LAW OF MARQUE.—Where those who are driven to it, take the shipping and goods of that people of whom they have received wrong, when they can take them within their own bounds and precincts, because they cannot get ordinary justice. 27 Edw. III. st. 2, c. 17. See **LETTERS OF MARQUE**.

LAW OF NATIONS.—The old-fashioned equivalent for "International Law," or, more strictly, "Public International Law" (*q. v.*) (See Manning's Law of Nations. 2.) It is a literal translation of the Latin phrase *jus gentium*, which, however, did not mean the law governing the conduct of States in their relations with one another, but those rules of law which are common to all civilized nations, "*vocaturque jus gentium quasi quo jure omnes gentes utuntur*." Just. Inst. I. ii.

LAW OF NATURE.—See **LAW**, § 2 and note.

LAW OF PARLIAMENT, (in reform act). 2 Cl. P. D. 26, 35.

LAW OF PLACE.—See **LEX LOCI**.

LAW OF THE LAND.—Due process of law (*q. v.*)

LAW OF THE LAND, (defined). 6 Pa. St. 87; 1 Kent Com. 600.

—— (what constitutes). 37 Me. 165; 6 Heisk. (Tenn.) 186; 2 Yerg. (Tenn.) 270; 10 Id. 59; 2 Tex. 251.

—— (equivalent to "due process of law"). 34 Ala. 216, 236; 60 Me. 504; 5 Mich. 251; 50 Miss. 468; 1 N. H. 53; 4 Hill (N. Y.) 146; 6 Pa. St. 87, 91; 73 Id. 370; 2 Kent Com. 13.

—— (does not mean mere acts of the legislature). 37 Me. 165, 171; 60 Id. 504.

—— (in Magna Charta). 6 Otto (U. S.) 102.

LAW OF THE LAND, (in constitution of South Carolina). 3 Desaus. (S. C.) 478.

— (in constitution of Tennessee). 2 Yerg. (Tenn.) 554.

LAW OF THE STAPLE.—Law administered in the court of the mayor of the staple; the law merchant. 4 Inst. 235. *See* STAPLE.

LAW REPORTS.—*See* REPORT.

LAW SPIRITUAL.—The ecclesiastical law, or law christian. Co. Litt. 344.

LAW SUIT.—An action or litigation.

LAW WORTHY.—Being entitled to, or having the benefit and protection of the law.

LAWBORGH.—In old Scotch law, a pledge for a person's appearance in court.

LAWDAY.—A court-leet, or view of frankpledge.

LAWFUL.—Legal; sanctioned by law; not contrary to law.

LAWFUL AGE.—Majority; usually the age of twenty-one years. *See* AGE.

LAWFUL AUTHORITIES, (in a treaty). 8 Pet. (U. S.) 436, 449; 9 *Id.* 711; 10 *Id.* 331.

LAWFUL AUTHORITY, (what is). 10 Johns. (N. Y.) 265.

LAWFUL AUTHORITY TO CONVEY, (in a covenant). 2 Bos. & P. 14 *n.*

LAWFUL CAUSE, (in a statute). L. R. 1 P. D. 80.

LAWFUL CURRENCY OF NEW JERSEY, (defined). South. (N. J.) 582.

LAWFUL CURRENT MONEY OF PENNSYLVANIA, (construed to mean paper money emitted under the authority of congress). 1 Dall. (U. S.) 124, 126.

LAWFUL DEED, (in an agreement). 5 Mass. 67.

LAWFUL DEED OF CONVEYANCE, (what is). 2 Serg. & R. (Pa.) 498, 500.

LAWFUL DISCHARGE, (what is). 1 Wheat. (U. S.) 447; 12 *Id.* 370.

LAWFUL FOR THE COURT, IT SHALL BE, (equivalent to "the court may"). 2 Harr. (N. J.) 169.

LAWFUL GOODS, (what are). 1 Johns. (N. Y.) Cas. 1; 2 *Id.* 77, 120.

LAWFUL HEIR, (in a will). 5 Mass. 501.

LAWFUL HEIRS, (in a will). 2 Bush (Ky.) 629; 5 Allen (Mass.) 257; 7 Jur. 410; 10 Ch. D. 113.

— (equivalent to "heirs of the body" or "issue"). 9 Jur. 269.

— (means "heirs of the body"). 2 T. R. 720.

LAWFUL IMPEDIMENT, (in a statute). 3 Dall. (U. S.) 251, 278.

LAWFUL ISSUE, (bastards cannot take as). 10 B. Mon. (Ky.) 188.

— (synonymous with "heir"). 3 Edw. (N. Y.) 1.

LAWFUL ISSUE, (not synonymous with "lawful heirs of the body"). 10 B. Mon. (Ky.) 193.

— (in a deed, when words of purchase). 21 Tex. 804.

— (in a will). 20 Hun (N. Y.) 70, 71.

LAWFUL MONEY.—Money which is a legal tender in payment of debts.

LAWFUL MONEY, (defined). 25 Cal. 564.

— (in a declaration). 5 Taunt. 228.

— (in a promissory note). 1 Yeates (Pa.) 349.

LAWFUL MONEY OF NORTH CAROLINA, (defined). 3 Yeates (Pa.) 321.

LAWFUL MONEY OF THE UNITED STATES, (defined). 1 Hempst. (U. S.) 236.

LAWFUL, SHALL AND MAY BE, (not imperative). 1 Edw. (N. Y.) 54.

LAWFUL TRADE, (in an insurance policy). 15 Wend. (N. Y.) 14; 3 T. R. 277.

LAWFULLY, (in an information). 2 Ld. Raym. 1375.

— (in pleading). Gould Pl. 183.

LAWFULLY BEGOTTEN, (in a will). 2 Harr. & J. (Md.) 69, 372; 5 *Id.* 10; 4 Halst. (N. J.) 14; 3 Binn. (Pa.) 382; 2 Yeates (Pa.) 409; 4 Wheel. Am. C. L. 401.

LAWFULLY DIVIDED, (in a will). 1 Duv. (Ky.) 9.

LAWFULLY POSSESSED, (equivalent to "peaceably possessed"). 45 Mo. 35.

LAWFULLY SEISED IN FEE, (in a covenant). 1 Bay (S. C.) 256, 327.

LAWFULLY USED AND EXERCISED, (in a statute). 9 Co. 24.

LAWING OF DOGS.—The cutting several claws of the forefeet of dogs in the forest, to prevent their running at deer.

LAWLESS COURT.—A tribunal held on King's Hill, at Rochford, in Essex, on Wednesday morning next after Michaelmas day, yearly, at cock-crowing; and he that owed suit or service there, and did not appear, forfeited double his rent.—*Cum. Brit.*

LAWLESS MAN.—An outlaw.

LAWS, (in a treaty). 12 Pet. (U. S.) 410.

LAWS OF OLERON.—A maritime code said to have been drawn up by Richard I. at the Isle of Oleron, whence their name. They are constantly quoted in proceedings before the Admiralty Courts, as are also the Rhodian laws. Co. Litt. 11. *See* OLERON.

LAWYER.—A person learned in the law, as an attorney, counsel, or solicitor.

LAY.—Not clerical; regarding or belonging to the people, as distinct from the clergy.

LAY CORPORATIONS.—Bodies politic; they are either (1) civil, erected for temporal purposes, or, (2) eleemosynary, for charitable purposes.

LAY DAYS, or LAYING DAYS.

—In the law of merchant shipping, the days which are allowed by a charter-party for loading and unloading the ship. If the vessel is detained beyond the period allowed, demurrage (*q. v.*) becomes payable. 2 Steph. Com. 141. See **CHARTER-PARTY**.

LAY FEE.—Lands held in fee of a lay lord, as distinguished from those lands which belong to the church.

LAY IMPROPRIATORS.—Lay persons to whose use ecclesiastical benefices have been annexed. At the dissolution of the monasteries by Stat. 27 Hen. VIII. c. 28, and 31 Hen. VIII. c. 13, the appropriations of the several parsonages which belonged to them were given to the king. The same had been done in former reigns when the alien priories were dissolved and given to the crown. From these two roots have sprung all the lay impropriations or secular parsonages, they having been afterwards granted out from time to time by the crown to laymen. See **APPROPRIATION**.

LAY INVESTITURE OF BISHOPS.

—Putting a bishop into possession of the temporalities belonging to his bishopric.

LAY OUT, (in a statute). 7 Metc. (Mass.) 84.

—(in statute relating to highways). 19 Conn. 597; 23 *Id.* 363; 24 Wend. (N. Y.) 491.

LAY OUT MONEY ON SECURITY, (in a will). 5 Madd. 368.

LAY OUT THE ROAD, (meaning of). 11 Ired. (N. C.) L. 94.

LAY PEOPLE.—Jurymen.

LAY, TO.—To allege, to state, &c., *e. g.* "No inconvenience can arise to the defendant from either mode of laying the assault." 2 Bos. & P. 427; 6 Mod. 88.

LAYE.—Law.

LAYING OF STOCK, (in mechanics' lien laws). 3 Minn. 86; 8 *Id.* 34.

LAYING OUT, (in a statute). 121 Mass. 382; 123 *Id.* 289; 60 How. (N. Y.) Pr. 293.

LAYING UP, (defined). 10 Barn. & C. 714.

LAYING THE VENUE.—Stating in the margin of a declaration the county in which the plaintiff proposes that the trial of the action shall take place. See **VENUE**.

LAYMAN.—(1) One of the people, and not of the clergy; (2) one who is not of the legal profession.

LAYSTALL.—A place for dung or soil.

LAZARET, or LAZARETTO.—Places where quarantine is to be performed by persons coming from infected countries. To escape from them is felony. 6 Geo. IV. c. 78, § 21.

LAZZI.—A Saxon term for persons of a servile condition.

LE CONGRES.—A species of proof on charges of impotency in France, *coitus coram testibus*. Abolished A. D. 1677.

Le ley est le plus haut enheritance que le roy ad, car per le ley il mesme et tous ses sujets sont rules, et si le ley ne fuit, nul roy ne nul enheritance serra (1 J. H. 6, 63): The law is the highest inheritance that the king possesses; for, by the law, both he and all his subjects are ruled; and if there were no law, there would be neither king nor inheritance.

LE ROY (or LA REINE) LE VEUT.—The king (or the queen) wills it. The form of the royal assent to public bills in parliament.

LE ROY (or LA REINE) REMERCIE SES LOYAL SUJETS, ACCEPTE LEUR BENEVOLENCE, ET AINSI LE VEUT.—The king (or the queen) thanks his (or her) loyal subjects, accepts their benevolence, and therefore wills it to be so. The form of the royal assent to a bill of supply.

LE ROY (or LA REINE) S'AVISERA.—The king (or the queen) will consider of it. The form of words used to express a denial of the royal assent.

LE ROI (or LA REINE) VEUT EN DELIBERER.—The king will deliberate on it. The formula which was used when the king intended to veto an act of the legislative assembly.

Le salut du peuple est la supreme loi (Mont. Esp. des Loix, l. xxvii., ch. 23): The safety of the people is the highest law.

LEA, or LEY.—A pasture. Co. Litt. 4b.

LEADING A USE.—When lands were conveyed by fine or recovery, the legal seisin and estate became thereby vested in the cognizee or demandant. But if the owner of the estate declared his intention that such fine or recovery should enure or operate to the use of a third person, a use immediately arose to such third person out of the seisin of the cognizee or demandant, and the Statute of Uses transferred the actual possession to such use, without any entry on the part of such third person. The deed by which the owner of the estate so declared his intention with regard to the lands thus conveyed was termed either a "deed to lead the uses" or a "deed to declare the uses;" when executed prior to levying the fine, or suffering the recovery, it bore the former appellation; when executed subsequently thereto it bore the latter. (1 Cru. Dig. 396).—*Brown*.

LEADING CASE.—A judicial decision or precedent settling the principles of a branch of law. Thus, *Coggs v. Bernard* is the leading case on the law of bailments (*q. v.*) Mr. J. W. Smith published an excellent selection of leading cases, principally illustrating rules of the common law. His example has been followed by Messrs. White and Tudor in their leading cases in equity, and by Mr. Tudor in his leading cases in conveyancing and mercantile law. Some excellent versions of the principal leading cases have been published anonymously under the title of "Leading Cases done into English."

LEADING COUNSEL.—That one of two or more counsel employed on the same side in a cause, who has the principal management of the cause. So called as distinguished from the other, who is called the "junior counsel."—*Bouvier*.

LEADING FROM, (in description of a highway). 2 Anstr. 572.

LEADING INTERROGATORY, (what is). 7 Serg. & R. (Pa.) 166, 171.

LEADING QUESTIONS.—On the examination of a witness, leading questions are questions which directly or indirectly suggest to him the answer he is to give. The general rule is, that leading questions are allowed in cross-examination, but not in examination-in-chief, unless the witness proves adverse. Best Ev. 799.

LEADING QUESTIONS, (defined). 3 Leigh. (Va.) 799.

— (what are). 4 Wend. (N. Y.) 229, 247; 6 Binn. (Pa.) 483; 8 Wheel. Am. C. L. 500.

LEADING TO, (apprehension of offenders). L. R. 2 Q. B. 301.

LEAGUE.—A treaty of alliance between different States or parties. It may be offensive or defensive, or both. It is *offensive* when the contracting parties agree to unite in attacking a common enemy; *defensive* when the parties agree to act in concert in defending each other against an enemy. Also, a measure equal to three English miles, or 300 geometrical paces.

LEAKAGE.—An allowance made to merchants for the leaking of casks or the waste of liquors.

LEAKAGE, (in marine policy). 107 Mass. 140; 9 Am. Rep. 14.

LEAL.—Loyal; belonging to law.

LEAP-YEAR.—See *BISSEXTILE*.

LEARNING.—Doctrine. 1 Leon. 77.

LEASE.—

§ 1. A lease is in effect a conveyance or grant of the possession of property (generally, but not necessarily, land or buildings) to last during the life of a person, or for a term of years or other fixed period, or at will, and usually with the reservation of a rent. Leases for a life or lives are comparatively rare, and when a lease is spoken of, *primâ facie* a lease for years is meant. The person who grants the lease is called the "lessor," the person to whom it is granted being the "lessee." Until he accepts the estate he has merely an *interesse termini* (*q. v.*) unless the lease takes effect under the Statute of Uses. It is essential to a lease that it should be for a less estate or term than the lessor has in the property, for if it comprises his whole interest it is a conveyance or assignment, and not a lease. (Shep. Touch. 266; Woodf. Land. & T. 73. 113, 236.) Again, if the intention of the parties is that the grantee is not to be entitled to exclusive possession of the property, the grant is a license and not a lease. Sm. S. & C. L. & T. 68; Woodf. Land. T. 113.

§ 2. A lease for years, or at will, is a chattel interest. See *CHATTEL*; *ESTATE*, § 5; *LEASEHOLDS*.

§ 3. **Underlease.**—Where a person who is himself a lessee grants a lease of the same property to another person for a shorter term, it is properly called an "underlease" or "sublease," or a "derivative lease." See *Camberwell, & Co., Building Society v. Holloway*, 13 Ch. D. 754.

§ 4. **Concurrent lease, or lease of a reversion.**—A concurrent lease, or lease of a reversion, is one granted for a term which is to commence before the determination of a previous lease of the same land to another person. If under seal, it operates as an assignment of the reversion during the continuance of the previous lease, so that the new lessee is entitled to the rent and covenants under the previous lease; and after the expiration of that

lease, it (the concurrent lease) operates as a lease in possession. Woodf. L. & T. 194.

§ 5. **Lease in reversion and reversionary lease.**—A lease in reversion is a lease which is not to take effect in possession immediately, and the term "reversionary lease" is sometimes used in the same sense; but strictly speaking, a reversionary lease is one to take effect from the expiration or determination of a previous lease. It only creates an *interesse termini*. Hyde v. Warden, 3 Ex. 72.

§ 6. With reference to the right or authority under which they are granted, leases are made either (1) under a right or power incident to the lessor's estate. Thus, a tenant in fee has power to grant leases for any term; or (2) under a power of appointment or limitation to uses, as where land is limited to A. and his heirs, to such uses as B. shall by demise appoint, (5 Byth. & J. 560. See POWER); or (3) under a statutory power, *e. g.* under the English Settled Estates Act (*q. v.*); or (4) by virtue of a custom. Thus, an infant seised of land holden in socage may, by the custom of some places, make binding leases at the age of fifteen (Co. Litt. 45 b); or (5) by virtue of an authority given by the common law. Thus, a guardian in socage or by election may in some cases grant leases of the infant's lands. (4 Byth. & J. 226.) As to leases by estoppel, see ESTOPPEL, § 4.

§ 7. **Forms of leases.**—Leases are made either by deed; or by writing not under seal (called by the old writers "leases parol") (Shep. Touch. 267); or without writing. (Woodf. Land. & T. 116; Sm. S. & C. L. & T. 42; Fawc. 67.) The only leases of land or other corporeal hereditaments which need not be made by deed, in England, are leases at will, or for a term not exceeding three years under the Statute of Frauds (*q. v.*) (29 Car. II. c. 3), and in practice the term lease commonly denotes a lease by deed.

§ 8. **By deed.**—A lease by deed in the ordinary form consists of the following parts: The premises; the *habendum*; the *reddendum*; the lessee's covenants; the proviso for re-entry, and the lessor's covenants. (See those titles. Woodf. Land. & T. 127; Fawc. 72; Elph. Conv. 231.) The covenants in a lease are generally

much more important than those in a conveyance. They vary according to the nature of the lease, but ordinarily they include covenants by the lessee for payment of the rent, and if the lease is one of a building, to repair and insure it, or if it is one of a farm or mine, to manage it in a proper manner. There is also, generally, a covenant by the lessee not to underlet or assign the lease without the lessor's consent, and not to carry on certain trades or occupations, and a covenant by the lessor for the quiet enjoyment and possession of the property by the lessee. Sm. S. & C. L. & T. 114 *et seq.*; Elph. Conv. 240.

§ 9. **Liability of assignee.**—The rent and covenants are always binding on the original lessee and his representatives, notwithstanding any assignment which he may make. On assigning leaseholds, therefore, the assignee is bound to enter into a covenant with the assignor to indemnify him against this liability. The assignee is himself also liable for rent unpaid or covenants broken during his tenancy, (provided the covenants run with the land, as to which see COVENANT, § 5,) but when he assigns to another, his liability ceases so far as regards future rent or breaches of covenant. (Wms. Real Prop. 397.) As to the statutory provisions enabling executors and trustees in bankruptcy to get rid of liabilities under leases vested in them, see DISCLAIMER, § 3; EXECUTOR, § 9.

§ 10. **Lease and counterpart.**—Leases are generally prepared in two parts, known as the lease and the counterpart. In England, the lease is executed by the lessor alone, and is kept by the lessee; the counterpart is executed by the lessee alone, and is kept by the lessor. (Fawc. 102.) In America, both papers are ordinarily executed by lessor and lessee.

§ 11. Leases are in some cases subject to statutory provisions; such are leases at a rack-rent by tenants for life, in England, (as to which see EMBLEMENTS,) and leases subject to the Agricultural Holdings Act (*q. v.*) See ATTORNMENT; DEMISE; DISTRESS; GAME; RENT; TERM; USE AND OCCUPATION.

LEASE, (defined). 17 Conn. 411; 24 Me. 542; 9 Allen (Mass.) 159, 167, 169; 3 Gr. (N. J.) 120, 121; 7 Barb. (N. Y.) 74, 78; 7 Cow. (N. Y.) 323; 5 How. (N. Y.) Pr. 58, 71; 1 Pa. 402, 407; 17 Am. Dec. 517, 520 n.; 2 Bl. Com. 20; Shep. Touch. ch. 14.

LEASE, (what constitutes). 1 Gill & J. (Md.) 266; 3 Johns. (N. Y.) 44; 5 *Id.* 74; 6 Watts (Pa.) 362; 3 McCord (S. C.) 211; 5 Rand. (Va.) 571; 6 Wheel. Am. C. L. 400; 5 Bing. 25; 14 Ves. 409; 1 Chit. Gen. Pr. 310, 474; Com. L. & T. 62.

— (what is not). 114 Mass. 127; 8 Johns. (N. Y.) 151; 24 Wend. (N. Y.) 201; 2 Ball & B. 68; Doug. 53 n.; 3 Taunt. 65; 1 T. R. 735; 8 Com. Dig. 697.

— (agreement to). 2 Taunt. 148; 3 *Id.* 433; 6 *Id.* 60.

— (assignment of). 4 Wheel. Am. C. L. 60 n.

— (by guardian in socage, may be for what period). 6 Paige (N. Y.) 391.

— (in a statute). 16 Wend. (N. Y.) 153, 257; 6 East 602.

— (power to make). Jac. 437; 1 Ld. Raym. 267; 2 Salk. 537; Yelv. 222.

— (when imports a covenant). 23 Mo. 199; 20 Pa. St. 482.

— (what words in a grant will pass). Cro. Jac. 318.

LEASE AND RELEASE.—A mode of conveying freehold land which was in common use, in England, down to the year 1841. It was invented to evade the Act 27 Hen. VIII. c. 16, passed to prevent land from being conveyed secretly by bargain and sale. The act only required bargains and sales of estates of inheritance or freehold to be enrolled, and therefore it soon became the practice on a sale of land for the vendor to execute a lease to the purchaser for a year, by way of bargain and sale, which, under the Statute of Uses, gave him seisin of the land without entry or enrollment, and then the vendor released his reversion to the purchaser by ordinary deed of grant, thus vesting in him the fee-simple in possession without entry or livery of seisin. In 1841, a release was made effectual without the preliminary lease for a year, and, in 1845, a deed of grant was made sufficient for the conveyance of all corporeal hereditaments. (Wms. Real Prop. 180; Wms. Seis. 146.) Conveyance by a release following on an ordinary lease perfected by entry is said to have been formerly employed. 1 Steph. Com. 527. See BARGAIN AND SALE, § 2; CONVEYANCE, §§ 7, 8; GRANT, § 2.

LEASE AT WILL, (sufficient to gain a settlement). 1 Str. 502.

LEASE, DEMISE, AND LET, (in a lease). 109 Mass. 235.

LEASE FOR LIFE, (must be by deed). 14 Ves. 156.

LEASE FOR YEARS, (what constitutes). 1 McLean (U. S.) 454; 14 Pet. (U. S.) 526; Bac. Abr. tit. Leases.

LEASE IN PRÆSENTI, (defined). 2 W. Bl. 973.

LEASE IN REVERSION, (defined). Com. 39.

LEASE, PAROL, (for over three years, effect of). 13 Wend. (N. Y.) 433; 1 Saund. 276 n.

— (an action of assumpsit will lie upon). 1 Saund. 322 n.

LEASED TERM, (in a covenant). 2 Barn. & C. 216.

LEASEHOLD ESTATE, (in a will). 9 East 369.

LEASEHOLD GROUND RENTS, (what passes under). 1 Bro. Ch. 76.

LEASEHOLDS.—Lands held under a lease for years. They are personal estate, being chattels real, and therefore they pass to the personal representative of the lessee or tenant on his death intestate. But for the purposes of the English Succession Duty Act (*q. v.*), Locke King's Act (*q. v.*), and the Stat. 27 Eliz. c. 4 (see VOLUNTARY), leaseholds are on the same footing as real estate. And by the Wills Act, a general devise of land, or lands and tenements, or the like, will include the testator's leasehold estates, unless a contrary intention appears. Wms. Real Prop. 404.

LEASING, or LESING.—Gleaning.

LEASING-MAKING.—Slandorous and untrue speeches to the disdain, reproach and contempt of the sovereign, his council and proceedings, or to the dishonor, hurt or prejudice of the sovereign or his ancestors.

LEAST, AT, (in a statute). 4 Man. & R. 300 n.

LEAVE, (defined). 12 Conn. 48, 50.

— (in a will). 2 Yeates (Pa.) 384; 1 Desaus. (S. C.) 133; 3 *Id.* 249; 2 Atk. 647; 3 Barn. & Ald. 425; 10 East 442; 9 Ves. 426.

LEAVE AND BEQUEATH, (in a will). 1 Swanst. 201.

LEAVE AND LICENSE.—A defense to an action in trespass setting up the consent of the plaintiff to the trespass complained of.

LEAVE LAWFUL ISSUE, (in a will). 10 Ves. 562, 569.

LEAVE OF COURT.—Permission obtained from a court to take some action which, without such permission, would not be allowable.

LEAVE OF THE COURT, (in a statute). 3: Harr. (N. J.) 260.

LEAVE TO MOVE to set aside or vary a judgment might formerly be given, in England, by the judge at the trial of an action, when some point of law was raised, the decision of which affected the fate of the action; the motion was heard by a divisional court. (Sm. Ac. 140; Rules of Court, xxxvi. 22. xl. 2.) This practice seems to have been abolished. Appellate Jurisdiction Act, 1875, § 17; Rules of Court, xxxvi. 22a. See MOTION FOR JUDGMENT; TRIAL.

LEAVE THE STATE, (equivalent to "remove from"). 5 La. 280.

LEAVING, (in a will). 1 Ves. 147.

LEAVING A MEETING-HOUSE, (in a deed). 106 Mass. 488, 497.

LEAVING AT REGISTRY, (in a statute). Wilberf. Stat. L. 250.

LEAVING ISSUE, (in a will). 7 Ch. D. 665.

LEAVING ISSUE OF HIS BODY, (in a will). 2: Chit. 662.

LEAVING NO CHILD, (in a will). 2 Gr. (N. J.) 175; 1 P. Wms. 486.

LEAVING NO ISSUE, (in a will). 8 Mass. 38; 1 U. S. L. J. 603; 2 Atk. 313; 3 *Id.* 397; 1 Barn. & Ad. 321; 16 East 67; 1 P. Wms. 663; 3 *Id.* 258; 3 T. R. 143; 9 Ves. 203.

LEAVING NO ISSUE BEHIND HIM, (in a will). 2 Yeates (Pa.) 409.

LEAVING NO ISSUE LIVING, (in a will). 1 Sax. (N. J.) 314.

LEAVING NO ISSUE OR CHILD, (in a will). 74 Pa. St. 173; 15 Am. Rep. 545.

LEAVING NO LAWFUL HEIR, (in a will). 2 T. R. 720.

LEAVING OUT, (defined). 5 Serg. & R. (Pa.) 58.

LECCATOR.—A debauched person.—*Cowell*.

LECHERWITE, LAIRWITE, or LEGERWITE.—A fine for adultery or fornication, anciently paid to the lords of certain manors. 4 Inst. 206. *See LAIRWITE*.

LECTRINUM.—A pulpit. Mon. Ang. tom. iii. 243.

LECTURER.—An instructor; a reader of lectures; also, a clergyman who assists rectors, &c., in preaching, &c. *See* 7 and 8 Vict. c. 59, and 18 and 19 Vict. c. 127, § 12.

LEDGER.—A book in which a trader enters the names and accounts of all persons dealing with him. There are two parallel columns in each account, on one of which the party named is the debtor, and on the other the creditor. As the ledger is a transcript from the day-book or journal, it is not a book of original entries and therefore not evidence *per se*.

LEDGER-BOOK.—A book in the prerogative courts, considered as their rolls.

LEDGREVE, or LEDGRAVE.—*See LATHEREVE*.

LEDO.—The rising water or increase of the sea.

LEEMAN'S ACT.—A name by which the 35 and 36 Vict. c. 91, is generally known. It authorizes the application of the funds of municipal corporations, and other governing bodies, under certain conditions, towards promoting or opposing parliamentary and other proceedings for the benefit or protection of inhabitants.

LEET.—*See* COURT LEET.

LEETS, or LEOTS.—Meetings which were appointed for the nomination or election of ecclesiastical officers in Scotland.—*Cowell*.

LEGA, or LACTA.—The alloy of money.—*Spel. Gloss.*

LEGABLE.—Capable of being bequeathed.

LEGACIES, (general and specific). 1 Halst. (N. J.) 139.

— (abatement of). 3 Atk. 693; 12 Sim. 42.

— (in a will). 7 Ves. 402.

— (in a will when does not include annuities). 9 Jur. 651; 14 L. J., n. s., Ch. 375.

— (to be satisfied out of the personal estate). 13 Serg. & R. (Pa.) 348.

LEGACIES AND BEQUESTS, (in a will). L. R. 6 Eq. 188.

LEGACIES TO BE PAID WITH INTEREST IN THREE MONTHS, (in a will). 4 Mass. 208, 215.

LEGACY—LEGATEE.—

§ 1. A legacy is a gift of personal property by will. The person to whom the property is given is called the "legatee," and the gift or property is called a "bequest" (*q. v.*) The legatee's title to the legacy is not complete, in some jurisdictions, until the executor has assented to it. *See* ASSENT.

Legacies are of three kinds: Specific, demonstrative, and general—

§ 2. **Specific**.—A specific legacy is a bequest of a specific part of the testator's personal estate. Thus, a bequest of "the service of plate which was presented to me on such an occasion," is specific, and so, also, is a bequest of "£100 consols standing in my name at the Bank of England." A specific legacy must be paid or retained by the executor in preference to the general legacies, and must not be sold for the payment of debts until the general assets of the testator are exhausted. (Wms. Pers. Prop. 401; 2 White & T. Lead. Cas. 252; Wats. Comp. Eq. 1232. *See* ADMINISTRATION, § 2.) On the other hand, a specific legacy is liable to ademption (*q. v.*) unless it is given in such a way as to refer to the state of the property at the testator's death. Thus, a bequest of "the black horses which I shall be possessed of at my death," is specific; but it takes effect if the testator leaves property answering the description, although he may have sold the black horses which he had at the date of his will. *Bothamley v. Sherson*, L. R. 20 Eq. 309.

§ 3. **Demonstrative**.—A demonstrative legacy is a gift of a certain sum directed to be paid out of a specific fund. Thus, "I bequeath to A. B. the sum of £50 to be paid out of the £100 consols in

my name," is a demonstrative legacy. Such a legacy is not adeemed by the testator selling or disposing of the fund in his life-time, while it also has the advantage of being paid in priority to the general legacies if the fund is sufficient. *Wms. Pers. Prop.* 401.

§ 4. **General.**—A general legacy is one payable only out of the general assets of the testator, as where he bequeaths to A. £100 sterling, or £100 consols, without referring to any particular stock, although he may have £100 consols standing in his name. So a legacy of a mourning ring of the value of £10, merely amounts to a general legacy of £10, with a direction to the executor to purchase a ring. A general legacy is liable to abatement or total failure, if the residuary estate is not sufficient to pay the testator's debts and other legacies, (*see* **ABATEMENT**, § 3,) unless it is given for valuable consideration, *e. g.* to a wife in consideration of her releasing her dower. *Id.* 402.

§ 5. **Trust.**—Where personal property is bequeathed to trustees to be held upon trust, *e. g.* to pay the income to A. B. for life—this is called a "trust legacy."

§ 6. **Infant.**—Where a legacy is given to an infant or person beyond the seas, the executor may pay the amount into court, and when the legatee comes of age, or returns, he may have it paid out to him on making an application by petition or motion. *Wms. Pers. Prop.* 399; *Dan. Ch. Pr.* 1911. *See* **PAYMENT INTO COURT**; *also*, **TITLES CUMULATIVE**; **EXECUTOR**; **LAPSE**; **MARSHALLING**; **MORTMAIN**; **SATISFACTION**; **WILL**.

LEGACY, (defined). 42 Ala. 9; *Toll. Ex.* 299.
 — (what is). 3 *Keyes* (N. Y.) 486; 6 *Wheel. Am. C. L.* 414; 4 *Com. Dig.* 154.
 — (includes what). 3 *Abb.* (N. Y.) App. Dec. 411.
 — (when applied to real estate). 9 *Serg. & R.* (Pa.) 446; 15 *East* 510; 2 *P. Wms.* 186; 5 *T. R.* 717.
 — (when presumed to be in satisfaction of a debt). 1 *Gr.* (N. J.) Ch. I.
 — (when not a satisfaction of a debt). 2 *Hill* (N. Y.) 576; 4 *Wend.* (N. Y.) 443.
 — (interest upon). 1 *Harr.* (N. J.) 370; 1 *Sax.* (N. J.) 40; 2 *Con. & L.* 528, 534; 3 *Jur.* 182; 2 *Younge & Coll. C. C.* 372.
 — (in a statute). 16 *Wend.* (N. Y.) 118.
 — (in a will). 2 *Gray* (Mass.) 325; 1 *N. C. Law Repos.* 107; 1 *Burr.* 269, 272; 3 *East* 523. 1 *Younge & Coll. C. C.* 565.

LEGACY DUTY.—

§ 1. In England, every legacy (except legacies to the husband, wife or descendants of the testator) is liable to a duty at so much per cent., varying according to the degree of relationship which the legatee bore to the testator. The exemption from duty formerly enjoyed by legacies under £20 has been abolished. The residue of the personal estate of a testator or intestate is liable to the same duties. *Wms. Pers. Prop.* 398; *Wms. Ex.* 1433; *Stat. 55 Geo. III. c. 184*; *Customs and Inland Rev. Act, 1881. See LEASEHOLDS*; *PROBATE*; *SUCCESSION DUTY*.

§ 2. The rates of legacy duty are as follows: Where the legacy or residue, or share or residue, is given to or devolves on a child of the deceased, or any descendant of a child of the deceased, or the father or mother or any lineal ancestor of the deceased, the duty is one per cent.; if a brother or sister of the deceased, or a descendant of a brother or sister, three per cent.; if a brother or sister of the father or mother of the deceased, or a descendant of such brother or sister, five per cent.; if a brother or sister of the grandfather or grandmother, or a descendant of such brother or sister, six per cent.; in any other case the duty is ten per cent. *Stat. 55 Geo. III. c. 184, schedule.*

§ 3. **When not payable.**—Legacy duty is not payable (1) on any legacy or share of residue coming to the husband or wife of the deceased (*Stat. 55 Geo. III. c. 184, schedule*); (2) on legacies of books, pictures, &c., given to scientific bodies and schools, &c. (*Stat. 39 Geo. III. c. 73, § 1*); (3) where the whole personal estate of a person dying after the 24th March, 1880, does not amount to the sum of £100 (*Stat. 43 Vict. c. 14, § 13*); (4) where probate duty has been paid on the estate, not exceeding £300, of a person dying on or after the 1st June, 1881, under the Customs and Inland Revenue Act, 1881 (*Id.* § 36); (5) on any legacy or share of residue coming to a child or other descendant of the deceased where probate duty has been paid under the Customs and Inland Revenue Act, 1881. *Id.* § 41. *See* **PROBATE DUTY**.

LEGACY, GENERAL, (what is). 8 *Jur.* 1038; 6 *Watts* (Pa.) 67.

LEGACY, PECUNIARY, (what is). 8 *Com. Dig.* 498.

LEGACY, SPECIFIC, (defined). 1 *P. Wms.* 540; *Love. Wills* 235.

— (what is). 16 *Conn.* 1, 9; 2 *Halst.* (N. J.) 414; 3 *Watts* (Pa.) 335; 3 *Yeates* (Pa.) 486, 491; 1 *Desaus.* (S. C.) 471, 475; 3 *Id.* 47; 5 *Wheel. Am. C. L.* 304; 2 *Bro. Ch.* 108; 3 *Id.* 160; 8 *Jur.* 1089; 8 *Com. Dig.* 497.

— (what is not). 3 *Harr.* (N. J.) 60; 1 *Hayw.* (N. C.) 228, 229; 1 *Jac. & W.* 581.

— (distinguished from "general legacy"). *Toll. Ex.* 301.

— (when exempt from contribution). 1 *Desaus.* (S. C.) 501.

LEGAL is opposed (1) to that which is illegal or unlawful (*see* those titles); (2) to that which is equitable (*q. v.*) As to legal memory, *see* **MEMORY**.

LEGAL ADVICE, (is a confidential communication and privileged). 2 Barn. & C. 745.

LEGAL ASSETS.—"Legal," as opposed to "equitable" assets, are such assets as the executor is chargeable with at law in an action brought there by a creditor of the deceased against him. In an administration of these assets, unlike equitable assets in the Court of Chancery, creditors are paid in priority, one over another, according to their several degrees. At the present day, however, no practical distinction exists between legal and equitable assets, excepting as regards the definition of each, all distinctions of effect having been gradually abolished by statute.

LEGAL ASSETS, (what are). Love. Wills 59.

— (what are not). 2 P. Wms. 416.

LEGAL CAPACITY, (what constitutes). 1 Root (Conn.) 187.

LEGAL COMMITMENT, (in a statute). 1 Hill (N. Y.) 171.

LEGAL CRUELTY, (in code). 36 Ga. 286.

LEGAL DEBT, (in a will). 8 Allen (Mass.) 343, 348.

LEGAL DEBTS.—Those that are recoverable in a court of common law, as debt on a bill of exchange, a bond, or a simple contract. *See* DEBTS.

LEGAL DISCRETION, (distinguished from "political discretion"). 2 Am. L. J. 271.

LEGAL ESTATES.—*See* ESTATE, § 3 *et seq.*

LEGAL HEIRS, (construed to mean "heirs of the body," or "child"). 24 Pa. St. 163, 171.

— (in a will). 63 Me. 388; 18 Am. Rep. 234; 4 Allen (Mass.) 466; 12 Cush. (Mass.) 123; 115 Mass. 124, 123.

LEGAL HOLIDAY, (in a statute). 14 Bankr. Reg. 388.

LEGAL INTEREST, (what is). 9 Ohio 147.

— (in a statute). 35 Cal. 624, 625.

LEGAL IRREGULARITY, (in a statute). 14 Abb. (N. Y.) Pr. 53.

LEGAL JURY, (twelve men constitute). 18 Cal. 409.

LEGAL MEMORY.—*See* MEMORY.

LEGAL OWNER OF POLICY OF INSURANCE, (who is). 37 Mich. 609.

LEGAL PRESUMPTIONS, (what are). 1 Watts (Pa.) 507; 5 Wheel. Am. C. L. 119; 7 *Id.* 418. — (upon what founded). 6 Wend. (N. Y.) 181.

LEGAL REPRESENTATIVE, (at common law, and as used in statutes). 4 Gilm. (Ill.) 454; 18 Ill. 472.

— (in a statute). 51 N. H. 71.

LEGAL REPRESENTATIVES, (defined). 89 Ill. 19.

— (who are). 2 Dall. (U. S.) 205; 12 Pet. (U. S.) 264; 2 Wall. (U. S.) 605; 6 Serg. & R. (Pa.) 83; 1 Yeates (Pa.) 220; 2 *Id.* 585, 588; 11 So. Car. 2; 3 Ves. 486, 489.

LEGAL REPRESENTATIVES, (construed to mean "administrators," or "executors"). 78 Ill. 147; 118 Mass. 198, 200.

— (as meaning "next of kin"). 3 Bradf. (N. Y.) 45, 52; 1 Anstr. 128, 132.

— (in deed of trust). 71 Ill. 91; 22 Am. Rep. 85.

— (in marriage settlement). L. R. 7 Ch. 376.

— (in a statute). 1 Conn. 180; 11 Pick. (Mass.) 173.

— (in a will). 2 Dall. (U. S.) 205; 3 Bro. Ch. 224; 6 Madd. 159; 6 Sim. 148; 3 Ves. 146, 486; 8 Com. Dig. 429, 475; Love. Wills 77.

LEGAL REVERSION.—The period within which a proprietor is at liberty to redeem land adjudged from him for debt.—*Ball Dict.*

LEGAL SETTLEMENT, (what is). 42 Me. 308.

— (how obtained). New Jersey Revised Statutes 834, § 1.

— (in a statute). 21 Me. 334; 44 *Id.* 352.

LEGAL SUBDIVISION, (in act of congress). 29 Cal. 317.

LEGAL TENDER.—*See* TENDER.

LEGAL TENDER NOTES, (what are). 25 Cal. 302, 564.

LEGAL TITLE, (in dower act). 1 Ind. 527

LEGAL WASTE.—*See* WASTE.

LEGALIS HOMO.—A person who stands *rectus in curia*, neither outlawed, excommunicated, nor infamous.

LEGALIS MONETA ANGLIÆ.—Lawful money of England. 1 Inst. 207.

LEGALITY, or **LEGALNESS**.—Lawfulness.

LEGALIZE—LEGALIZATION.—

§ 1. Nuisance, &c.—When an act which is *primâ facie* illegal becomes legal, it is said to be legalized. Thus, many acts done upon a man's own property, which are injurious to the adjoining land and consequently actionable as nuisances, may be legalized by prescription, and thus form easements (*q. v.*, § 10). Gale Easms. 482.

§ 2. Document.—When the execution of a document is attested by a notary, consul, magistrate, or the like, it is sometimes said to be legalized. This expression is borrowed from the French. (Saint Bonnet, *Dict. s. v. Législation*.) It can hardly be said to be a technical term of law.

LEGALIZE, (in a statute). 102 Mass. 128.

LEGALLY.—Lawfully; according to law.

LEGALLY APPOINTED, (in an indictment). 127 Mass. 7, 13.

LEGALLY DETERMINED, (defined). 1 Greenl. (Me.) 84.

—— (in an agreement). 1 Wheel. Am. C. L. 219.

LEGALLY FILLED UP AND ENJOYED, (in a statute). 10 East 211.

LEGALLY LAID OUT ROADS, (defined). 54 Wis. 89.*

LEGAMANNUS.—See LAGEMAN.

LEGANTINE, or LEGATINE CONSTITUTIONS. — Ecclesiastical laws enacted in national synods, held under the Cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV., in the reign of King Henry III., about the years 1220 and 1268.—Wharton.

LEGATARY.—A legatee; a legate or nuncio.

LEGATE.—A deputy; an ambassador, the pope's nuncio. There are three kinds: (1) Legates *à latere*, being such as the pope commissions to take his place in councils, and so called because he never gives this office to any but his favorites and confidants, who are always *à latere*—at his side; (2) legates *de latere* or *legati dati*, those entrusted with apostolical legation, and acting under a special commission; (3) legates *by office* or *legati nati*, those that were legates by virtue of their offices, as in England, the Archbishop of Canterbury in former times.—*Encycl. Lond.*

LEGATEE.—One who has a legacy left to him.

LEGATEE, (defined). 3 Halst. (N. J.) 111.

—— (who is). 5 Ired. (N. C.) Eq. 84.

—— (as synonymous with "devisee"). 34 Wis. 505.

—— (in a will). 23 Ga. 571; 15 East 510; L. R. 8 Ch. 751.

LEGATEE, RESIDUARY, (interest of). 6 Watts (Pa.) 85.

—— (in a will). 119 Mass. 523, 525.

LEGATION.—An embassy or diplomatic mission.

LEGATOR.—One who makes a will, and leaves legacies.

LEGATORUM GENERA QUATUOR.—In the Roman law there were four classes of legacies, viz.: (1) *Per vindicationem*, carrying a direct property into the legatee; (2) *per damnationem*, obliging the executor (*hæres*) to make the property over to the legatee; (3) *sinendi modo*, obliging the executor to permit or suffer the legatee to take the property bequeathed, and; (4) *per præceptionem*, being a preferential legacy. The legacy *per damnationem* was frequently said to be *optimi juris*, as being most efficacious in law; however, the *Scdm. Neronianum* made all the four classes equally effica-

cious, and Justinian abolished altogether the distinctions between them.—Brown.

Legatos violare contra jus gentium est (4 Co., *ad lect.*): It is contrary to the law of nations to injure ambassadors.

LEGATUM.—A legacy given to the church, or an accustomed mortuary.—Corwell.

Legatum morte testatoris tantum confirmatur, sicut donatio inter vivos traditione sola (Dyer 143): A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone.

LEGATUM OPTIONIS.—In the Roman law, a legacy to A. B. of any article or articles that A. B. liked to choose or select out of the testator's estate. If A. B. died after the testator, but before making the choice or selection, his representative (*hæres*) could not, prior to Justinian, make the selection for him, but the legacy failed altogether. Justinian, however, made the legacy good, and enabled the representative to choose.—Brown.

Legatus regis vice fungitur a quo destinatur et honorandus est sicut ille cujus vicem gerit (12 Co. 17): An ambassador fills the place of the king by whom he is sent, and is to be honored as he is whose place he fills.

LEGEM FACERE.—To make law upon oath.—See Selden's Notes on Heng. 133.

LEGEM FERRE, or ROGARE.—To propose a law.

LEGEM HABERE.—To be capable of giving evidence upon oath. Witnesses who had been convicted of crime were incapable of giving evidence, until 6 and 7 Vict. c. 85. See OATH.

LEGEM SCISCERE. To give consent and authority to a proposed law, applied to the consent of the people.

LEGER, LEIGER, or LEDGER.—Anything that lies in a place, as a leger-book, a book that lies in a counting-house; leger-ambassador, a resident ambassador.—Wharton.

LEGERGILD.—See LAIRWITE.

LEGES.—Laws; the plural of *lex*.

Leges Angliæ sunt tripartitæ: jus commune, consuetudines, ac decreta comitiorum: The laws of England are threefold: common law, customs and decrees of parliament.

Leges non verbis sed rebus sunt impositæ (10 Co. 101): Laws are imposed on things, not words.

Leges posteriores priores contrarias abrogant (2 Roll. 410): Later laws abrogate prior contrary laws.

LEGIOSUS.—Litigious; subjected to a course of law.—*Cowell*.

Legis constructio non facit injuriam (Co. Litt. 183): The construction of law does no injury.

Legis interpretatio legis vim obtinet (Elles. Post. 55): The interpretation of law obtains the force of law.

LEGISLATION.—The act of giving or enacting laws.

LEGISLATOR.—A law maker.

LEGISLATURE.—The power that makes laws for a State or nation; a legislative body.

LEGITIM.—The legal share of the father's free movable property due on his death to his children, in Scotland. Where a father dies leaving a widow and children, his free movable estate is divisible into three equal parts; one-third part is divided equally amongst all the children, whether of his last or of any former marriage, as legitim; another third goes to his widow as her *jus relictæ*; and the remaining third is called "dead's part," which the father may dispose of as he pleases by will. If he die intestate, the "dead's part" goes to his children as next of kin. If the father leave no widow the legitim is one-half instead of one-third.—*Bell Dict.*

LEGITIMACY—LEGITIMATE.—

§ 1. "Legitimate" signifies "lawful." The word is applied especially to children to signify that they have been born in lawful wedlock. Co. Litt. 244 a.

§ 2. **Legitimacy Declaration Act, 1858.**—Under the Stat. 21 and 22 Vict. c. 93, a natural-born subject of Great Britain may apply to the High Court, in the Probate, Divorce and Matrimonial Division, for a declaration that he is legitimate, or that his parents or grandparents were validly married, or that he himself is validly married, or that he is a natural-born subject of the queen. A judgment made on such a petition is *in rem*, i. e. binding on all the world. See **BASTARD**; **CHILD**; **MULIER**.

LEGITIMATE HEIRS, (in a will). 1 Ves. Sr. 521.

LEGITIMATING.—The act of making legal or of giving the right of lawful birth. As to legitimation in the civil law, see *Sand. Just.* (5 edit.) 88.

LEGITIMATION PER SUBSEQUENS MATRIMONIUM.—The legitimation of a bastard by the subsequent marriage of his parents.—*Bell Dict.*

LEGITIME.—In the civil law, that portion of a parent's estate of which he cannot disinherit his children without a legal cause. See **LEGITIM**.

Legitime imperanti parere necesse est (Jenk. Cent. 120): One lawfully commanding must be obeyed.

LEGRUITA.—In old records, a fine for criminal conversation with a woman.

LEGUMINA, (means "pulse" as applied to plants). 3 Dowl. & Ry. 143.

LEIBNITZ.—Gottfried Wilhelm Leibnitz was born on the 3d July, 1646, in Leipzig, and died at Hanover, on the 14th November, 1716. He wrote *Methodus Nova Jurisprudentiæ*, *Codex Juris Gentium Diplomaticus*, *Observationes De Principiis Juris*, and numerous miscellaneous works. *Holtz Encycl. s. v.*

LEIDGRAVE.—An officer under the Saxon government, who had jurisdiction over a lath.—*Encycl. Lond.* See **LATH**.

LEIGH.—A meadow.

LEIPA.—One who escapes or departs from service.—*Spel. Gloss.*

LEND, (in a statute). 32 Ala. 581.
— (in a will, when equivalent to "give"). 16 Ga. 20; 1 Hill (S. C.) Ch. 27.

LENDER.—He who supplies a thing borrowed. The bailor of an article loaned. See **BAILEMENT**; **LOAN**.

LENT.—The quadragesimal feast; a time of abstinence; the time from Ash-Wednesday to Easter.

LENT, (defined). 2 Wils. 141, 142.

LEOD.—The people, nation, country, &c.—*Gibbon's Comd.*

LEODIUM.—Lieve.

LEOHT-GESCEOT.—A tax for supplying the church with lights.—*Anc. Inst. Eng.*

LEONINA SOCIETAS.—An attempted partnership, in which one party was to bear all the losses, and have no share in the profits. This was a void partnership in Roman law; and, apparently, it would also be void as a partnership in English law, as being inherently inconsistent with the notion of partnership. (Dig. xvii. 2, 29, § 2; Code Civil, iii. ix. 3, 1855.)—*Brown*.

LEP AND LACE.—A custom in the manor of Writtle, in Essex, that every cart which goes over Greenbury, within that manor

(except it be the cart of a nobleman) shall pay 4*d.* to the lord.—*Blount.*

LEPORARIUS.—A greyhound.—*Cowell.*

LEPORIUM.—A place where hares are kept.—*Mon. Ang. t. 2, 1035.*

LEPROSO AMOVENDO.—*See DE LEPROSO AMOVENDO.*

Les lois ne se chargent de punir que les actions extérieures: Laws charge themselves with punishing overt acts only, *i. e.* "so long as an act rests in bare intention it is not punishable."

LESCHEWES.—Trees fallen by chance or wind-falls. *Bro. Abr. 341.*

LESIA.—A leash of greyhounds.—*Spel. Gloss.*

LESION.—In the French law, upon a sale, it is competent for the purchaser to rescind the contract on account of *lésion, i. e.* the worsened value of the thing sold, when it exceeds seven-twelfths of the price given. A purchaser cannot bargain away his right in this respect, but he must exercise it within two years. In the contract of exchange, there is no right of rescission, *pour cause de lésion.* (Code Civil, 1706.)—*Brown.*

LESPEGEND.—An inferior officer in forests to take care of the vert and venison therein, &c.—*Wharton.*

LESS VALUABLE, (in a statute). 9 East 169.

LESSA.—A legacy. *Mon. Ang. tom. i. 562.*

LESSEE—LESSOR.—In the most general sense of the words, "where a man letteth to another lands or tenements for terme of life, or for terme of years, or to hold at will, he which maketh the lease is called lessor, and he to whom the lease is made is called lessee." (Litt. § 57.) In practice, however, the terms lessor and lessee are only used in the case of a lease for years, for occupation, building, or mining purposes, or the like. *See LEASE; TENANT FOR LIFE; TENANT FOR YEARS; TERM.*

LESSEE, (in a statute). 57 Barb. (N. Y.) 589.

LESSEN AND REDUCE TO, (in turnpike act). 4 Barn. & C. 361.

LESSOR OF THE PLAINTIFF.—The lessor of the plaintiff in the old action of ejectment was the party who really and in effect was interested in its result. He must, at the time of bringing the action, have had the legal estate, and the right to the possession of the premises sought to be recovered. 7 T. R. 47; 2 Burr 668; 8 T. R. 2 n.; 1 Chit. Pl. 187.

LESTAGE.—*See LASTAGE.*

LESTAGEFREY.—Lestage free, or exempt from the duty of paying ballast-money.—*Cowell.*

LESTAGIUM.—Lastage, or lestage; a duty laid on the cargo of a ship.—*Cowell.*

LESWES, or LESUES.—Pastures.—*Domesd.; Co. Litt. 4 b.*

LET.—(1) Hindrance, obstruction; (2) to lease, or hire out a thing for a compensation.

LET, (in an agreement). 4 Car. & P. 474.

— (in a covenant). 4 Dowl. & Ry. 226.

— (in a lease). 9 Cush. (Mass.) 246; 15 Wend. (N. Y.) 867; 2 W. Bl. 973; Cro. Eliz. 486; Moo. 459, 861; 5 T. R. 165; 12 Ves. 395.

LET AND LEASE, (in a lease, do not make a covenant in law). 13 N. H. 513.

LETA.—A court-leet.

LETHAL WEAPON.—In the Scotch law, a deadly weapon.

LEATHERWITE.—*See LAIRWITE.*

LETTER.—With regard to contracts or agreements entered into by letter, the leading rule is, that a person who makes a proposal to another by letter is considered in law as making it during the whole time that the letter is traveling, and that as soon as the acceptor despatches his acceptance, he may treat the contract as complete. In other words, an acceptance by letter is complete as against the proposer from the date of posting the acceptance, if it arrives within the proper time. What is a "proper time" depends on whether the proposer has prescribed a mode and time of communicating the acceptance. If he has not, it depends on the nature of the business in hand. If, however, the communication of the acceptance is delayed by the fault of the proposer, or by accident, the delay is not to be reckoned against the acceptor. The true principle also is, that the acceptor is at liberty to revoke his acceptance at any time before it reaches the proposer, (*e. g.* by telegraph,) but this principle does not yet seem to have been established by any decision. The result is, that if a person makes a proposal by post and does not receive an answer as soon as he expected, he cannot assume that the proposal has been rejected, except at his own risk. *See*

Adams v. Linsell, 1 Barn. & A. 681; Dunlop v. Higgins, 1 H. L. Cas. 381; British & A. T. Co. v. Colson, L. R. 6 Ex. 108; Poll. Cont. 13.

LETTER, (defined). 1 Pick. (Mass. 56).
 — (contract by). 2 Bibb (Ky.) 98; 1 Pick. (Mass.) 278; 1 Paige (N. Y.) 434; 1 Hill (S. C.) Ch. 167; 1 Wheel. Am. C. L. 229; 6 Madd. 316; 2 Sim. & S. 195.

LETTER BOOK.—A book in which a merchant or trader keeps copies of letters sent by him to his correspondents.

LETTER, CONTRACTS BY.—See **LETTER**.

LETTER MISSIVE.—

§ 1. In ecclesiastical law, a document sent with the *congé d'élire* to the dean and chapter, containing the name of the person whom they are to elect. Phillim. Ecc. L. 42. See *CONGE D'ELIRE*.

§ 2. Under the practice of the Court of Chancery, before a peer was served with the bill in a suit, he was entitled to be informed by a communication from the lord chancellor, termed a "letter missive," of the fact of the bill having been filed. (Dan. Ch. Pr. 366.) This is now obsolete. See **BILL OF COMPLAINT**.

LETTER OF ADVICE.—A letter containing information of any circumstances unknown to the person to whom it is sent, or informing him of some act done by the writer. See **ADVICE**.

LETTER OF ATTORNEY.—A writing authorizing another person, who, in such case, is called the attorney of the person appointing him, to do any lawful act in the stead of another, as to give seisin of lands, receive debts, or sue a third person, &c. It is either general or special. The nature of this instrument is to give the attorney the full power and authority of the maker to accomplish the act intended to be performed; sometimes it is revocable, sometimes not. If it is an authority coupled with an interest, *e. g.* if the attorney is authorized to collect debts, and pay thereout a debt due to himself, it is irrevocable. But revocable letters of attorney may be dissolved either by acts of the parties or operation of law.

LETTER OF CREDENCE.—See **CREDENTIALS**.

LETTER OF CREDIT.—

§ 1. A letter of credit is an authority by one person (A.) to another (B.) to draw

checks or bills of exchange (with or without a limit as to amount) upon him (A.) with an undertaking by A. to honor the drafts on presentation. An ordinary letter of credit also contains the name of the person (A.'s correspondent) by whom the drafts are to be negotiated or cashed. When it does not do so it is called an "open letter of credit."

§ 2. A letter of credit is, in fact, a proposal or request to the person named therein, or (in the case of an open letter) to persons generally, to advance money on the faith of it, and the advance constitutes an acceptance of the proposal, thus making a contract between the giver of the letter of credit and the person cashing or negotiating the draft, by which the former is bound to honor the draft. Poll. Cont. 181; Byles Bills 96; *Ex parte Asiatic Banking Corporation*, L. R. 2 Ch. 391. See **AGREEMENT**.

§ 3. **Circular notes**.—Letters of credit are sometimes used in conjunction with circular notes, in which case the letter of credit is called a "letter of indication." (Byles Bills 95.) Circular notes are forms of drafts, generally for some specific amount, given with the letter, and requiring to be signed by the bearer. Circular notes are chiefly used by persons traveling abroad, and may be obtained from almost any banker.

LETTER OF CREDIT, (defined). 4 Duer (N. Y.) 586; 13 N. Y. 599, 630.

— (not negotiable). 5 Hill (N. Y.) 634.
 — (general, what is). 1 Sandf. (N. Y.) 563.

— (special and general, distinguished). 3 N. Y. 203, 214.

LETTER OF EXCHANGE.—A bill of exchange (*q. v.*)

LETTER OF HORNING.—See **HORNING**.

LETTER OF LICENSE.—An agreement between a debtor and his creditors that the latter shall for a specified time suspend their claims, and allow the debtor to carry on his business at his own discretion. It is, however, usually accompanied, in England, by a provision that the business shall be carried on under the inspection and control of persons nominated by the creditors, who are called "inspectors," and the agreement then becomes, and is termed, a "deed of inspectorship." (5 Dav. Prec. (Conv. 2) 519.) The object of these instruments is to avoid bankruptcy proceedings. See **BANKRUPTCY**; **COMPOSITION**.

LETTER OF RECALL.—A document addressed by the executive of one nation to that of another, informing the latter that a minister sent by the former has been recalled.

LETTERS CLOSE.—Letters or missives in the name of the sovereign, and sealed with the great seal, being directed to particular persons for particular purposes. They are closed up and sealed on the outside, whence their name. 2 Bl. Com. 346; 1 Steph. Com. 619. *See* LETTERS PATENT.

LETTERS OF ABSOLUTION.—Absolatory letters, used in former times, when an abbot released any of his brethren *ab omnia subjectione et obedientia*, &c., and made them capable of entering into some other order of religion. —*Jacob*.

LETTERS OF ADMINISTRATION.—

§ 1. Where a person possessed of personal property dies intestate, or without an executor, the court having jurisdiction in such matters will grant to a proper person an authority under the seal of the court, called "letters of administration," by which the grantee, the administrator, becomes clothed with powers and duties similar to those of an executor (*q. v.*) (Browne Prob. Pr. 206.) In addition to the oaths taken by the administrator, which are similar to those taken by an executor (*see* PROBATE), he enters into a bond. *See* ADMINISTRATOR.

§ 2. If the deceased died wholly intestate, simple letters of administration are granted to one of the next of kin, (*e. g.* the widow or children of the deceased,) or, if they renounce, to a creditor or other person, according to certain rules. *Id.* 163 *et seq.*

§ 3. If a will of the deceased exists, but no executor has been appointed, or the executor appointed pre-deceases the testator, or refuses or becomes incapable to act, the court will grant (as a general rule, to the person having the greatest interest under the will, *e. g.* the residuary legatee,) letters of administration with the will annexed (*cum testamento annexo*), a grant which is similar to probate of the will. (*Id.* 150; Coote Prob. Pr. 49.) As to limited grants of letters of administration, *see* GRANT, § 5 *et seq.*

LETTERS OF FIRE AND SWORD.
—*See* FIRE AND SWORD.

LETTERS OF MARQUE.—Extraordinary commissions issued, either in time of open war or in time of peace, after all attempts to procure legal redress have failed, by government authority, to the commanders of merchant ships, authorizing reprisals for reparation of the damages sustained by them through enemies at sea. They were formerly either *special*, to make reparation to individuals, or *general*, when issued by the government of one state against all the subjects of another. (Maud & P. Mer. Sh. 41 *n.*, citing Beaw. 311; 1 Bl. Com. 258; Hallam's Middle Ages, ii. 96.) The latter kind seems to be the same thing as privateering (*q. v.*) and, therefore, (in England,) no longer allowed. Man. Int. Law. 147. *See* REPRISALS.

LETTERS OF REQUEST.—

§ 1. In ecclesiastical practice, where a diocesan court (*q. v.*) has jurisdiction in a case, but the plaintiff wishes the cause to be instituted in the Provincial Court (*q. v.*), he may apply to the judge of the former court for letters of request; and when the judge has signed them, and they have been accepted by the judge of the Provincial Court, a decree issues under his seal, calling upon the defendant to answer to the plaintiff in the suit. Phillim. Ecc. L. 1278.

§ 2. Letters of request are sometimes issued for other purposes, *e. g.* they are sent from one judge to another to request him to examine witnesses out of the jurisdiction of the former but in that of the latter; to enforce a monition, &c. *Id.* 1279; *see, also*, Stat. 3 and 4 Vict. c. 86; Phillim. Ecc. L. 1314 *et seq.* *See* LETTERS ROGATORY.

LETTERS OF SAFE-CONDUCT.—No subject of a nation at war with England can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another, without danger of being seized, unless he has letters of safe-conduct, which, by divers old statutes, must be granted under the great seal, and enrolled in Chancery, or else are of no effect—the sovereign being the best judge of such emergencies as may deserve exemption from the general law of arms. (Chit. Prerog. 48, and Vattel, by Chit. 416.) But passports or licenses from the ambassadors abroad, are now more usually obtained, and are allowed to be of equal validity.—*Wharton*.

LETTERS OF SLAINS, or SLAINES.—Letters subscribed by the relatives of a person who had been slain, declaring that they had received an assyhtment, and concurring in an application to the crown for a pardon to the offender. These, or other evidences of their concurrence, were necessary to found the application.—*Bell Dict.*

LETTERS-PATENT.—Grants by the government of lands, franchises, offices, &c., contained in charters or instruments not sealed up but exposed to open view with the great seal pendant at the bottom, and usually addressed to all the subjects of the realm. (2 Bl. Com. 346; 1 Steph. Com. 618.) As to letters-patent for inventions, see **PATENT**; see, also, **GRANT**, § 4; **GREAT SEAL**; **LETTERS CLOSE**; **WARRANT**.

LETTERS ROGATORY, or REQUISITORY.—A written request for the examination of a witness, addressed by one court to another in an independent jurisdiction; an unauthoritative commission to take testimony. Before the era of the statutes and conventions on this subject now quite common, any steps to obtain the testimony of a witness in a foreign jurisdiction rested upon the comity of courts towards each other. The request which a court issues, founded on comity, to a foreign tribunal, that it will cause the testimony of a witness residing within its jurisdiction to be taken and transmitted to the first court, for use in a cause there pending, is called "letters rogatory."—*Abbott*.

LETTERS TESTAMENTARY.—An instrument granted by a surrogate, or other proper officer, to an executor, after probate of a will, authorizing him to act as executor.

LETTING OUT.—The act of awarding a contract, *e. g.* a construction contract, or contract for carrying the mails.

LETTING TO FREIGHT, (in a charter party). 2 Brod. & B. 428.

LETTRES DE CACHET.—Letters issued and signed by the kings of France, and countersigned by a secretary of state, authorizing the imprisonment of a person. It is said that they were devised by Père Joseph, under the administration of Richelieu. They were at first made use of occasionally as a means of delaying the course of justice; but during the reign of Louis XIV., they were obtained by any person of sufficient influence with the king or his ministers. Under them, persons were imprisoned for life, or for a long period, on the most frivolous pretexts, for the gratification of private pique or revenge, and without any reason being assigned for such punishment. They were also granted by the king for the purpose of shielding his favorites or their friends from the consequences of their crimes; and thus were as pernicious in their operation as the protection afforded by the church to criminals in a former age. Abolished during the Revolution of 1789.—*Wharton*.

LEUCA.—A measure of land, the extent of which is not precisely known. Some say 1500 paces. *Ingulpus*, p. 910, says 2000 paces.

In the *Monastic*, tom. i. p. 313, it is 480 perches. *Spelman* says a mile.—*Wharton*.

LEUCATA.—A space of ground as much as a mile contains.—*Monastic*, tom. i. p. 768. And so it seems to be used in a charter of William the Conqueror to Battle Abbey.—*Cowell*.

LEVANDÆ NAVIS CAUSA.—For the purpose of lightening the ship. A jettison (*q. v.*) See, also, **AVERAGE**; **GENERAL AVERAGE**.

LEVANT AND COUCHANT.—

§ 1. **Common of pasture.**—When land to which a right of common of pasture is annexed can maintain during the winter by its produce, or requires to plough and compester it, a certain number of cattle, those cattle are said to be levant and couchant on the land. The origin of this double definition of levancy and couchancy probably was, that the number requisite to plough and compester was the limit to common appendant, and the capacity of wintering was the limit to common appurtenant. It appears that the courts have adopted the latter admeasurement as the most liberal in both cases, but they have never denied the right of common appendant to be admeasured by its original standard. (Cooke Incl. 10.) It is therefore commonly said, that cattle levant and couchant are such as the produce of the land will maintain during the winter, without reference to their being required for its tillage. *Elt. Com.* 56, citing *Whitelock v. Hutchinson*, 2 Moo. & R. 205. In the French feudal law, the term was applied to villeins domiciled in a seignory, *Loysel, Inst. Cout. gl. v. Hommes Couchants et Levants*.

§ 2. Levancy and couchancy is one of the standards for ascertaining the number of cattle which each commoner may put on the common. See **COMMON**, §§ 5, 10.

§ 3. **Distress.**—If cattle escape from A.'s land into B.'s land by default of B., (as for want of his keeping a sufficient fence,) they cannot be distrained for rent by B.'s landlord until they have been levant and couchant on the land, *i. e.* until they have been at least one night there. If they escape by default of A., they may be distrained immediately. *Harg. note to Co. Litt.* 47 b; see 3 Steph. Com. 249.

LEVARI FACIAS.—

§ 1. **In English law.**—A writ of execution which commands the sheriff to levy a judgment debt on the lands and goods of the debtor by seizing and selling the latter, and receiving the rents and profits of the lands until the debt is satisfied. This writ has been practically superseded by the writ of *elegit* (*q. v.*) The writ of *sequestrari facias* (*q. v.*) is in the nature of a *levari facias*, and is hence sometimes called *levari facias de bonis ecclesiasticis*. *Chit. Gen. Pr.* 693; *Sm. Ac.* (11 edit.) 397.

§ 2. **In American law.**—A writ in use in Pennsylvania, and a few other States, authorizing the sale of mortgaged lands, to

satisfy a judgment obtained by the mortgagee against the mortgagor.

LEVARI FACIAS DAMNA DE DISSEISITORIBUS.—A writ directed to the sheriff for the levying of damages, which a disseisor had been condemned to pay to the disseisee.—*Cowell*.

LEVARI FACIAS QUANDO VICECOMES RETURNAVIT QUOD NON HABUIT EMPTORES.—A writ commanding the sheriff to sell the goods of a debtor which he had already taken, and had returned that he could not sell them; and as much more of the debtor's goods as would satisfy the whole debt.—*Cowell*.

LEVARI FACIAS RESIDUUM DEBITI.—A writ directed to the sheriff, for levying the remnant of a partly satisfied debt upon the lands and tenements or chattels of the debtor.—*Cowell*.

LEVEL, (under mining customs, defined). 5 Ad. & E. 302.

— (in a covenant). 4 Nev. & M. 602.

LEVIABLE.—That which may be levied.

LEVIABLE INTEREST, (a pre-emption claim is not). 53 Mo. 170.

LEVIED, (in a statute). 2 Cranch (U. S.) 53.

LEVIED HIS CERTAIN PLAINT, (synonymous with "commenced his suit"). 2 Hall. (N. Y.) 471.

LEVIED UPON, (in sheriff's return). 3 Minn. 277.

LEVITICAL DEGREES.—Degrees of kindred within which persons are prohibited to marry. They are set forth in the eighteenth chapter of Leviticus. By 82 Henry VIII. c. 38, it is declared that all persons may lawfully marry, but such as are prohibited by God's law; and it is declared by the same statute, that "no reservation or prohibition (God's law except) shall trouble or impeach any marriage without the Levitical degrees." 1 Broom & H. Com. 528; 2 Steph. Com. (7 edit.) 242.

LEVY.—

§ 1. **Money.**—To levy, is to raise a sum of money, *e. g.* by a writ of execution against the property of a judgment debtor. See **EXECUTION**, § 3 *et seq.*; **FIERI FACIAS**.

§ 2. **War.**—To levy war, is the assembling or combining of persons for the purpose of forcibly effecting a treasonable object. See **TREASON**.

§ 3. As to levying fines and taxes, see **FINE**; **TAXATION**.

LEVY, (what constitutes). 29 Ga. 710; 25 Ill. 344; 25 Iowa 464; 8 B. Mon. (Ky.) 300; 27 La. Ann. 265; 18 Miss. 35; 9 Barb. (N. Y.) 619; 5 Den. (N. Y.) 198; 1 Edm. (N. Y.) Sel. Cas. 356; 1 Hill (N. Y.) 559; 2 Id. 666; 3 Wend. (N. Y.) 446; 14 Id. 123; 19 Id. 495; 23 Id. 462, 490; 4 Dev. & B. (N. C.) L. 384; 7 Ired. (N. C.) L. 74; 13 Ohio St. 79; 46 Pa. St. 294; 6 Phil. (Pa.) 315; 2 Serg. & R. (Pa.) 156; 4 Wis. 513.

— (what is not). 27 La. Ann. 539; 1 Mau. & Sel. 711.

— (when synonymous with "assess"). 13 Vr. (N. J.) 99.

— (when synonymous with "collect"). 1 Mo. App. 344.

— (when synonymous with "make," or "produce"). 1 Wend. (N. Y.) 540.

— (when synonymous with "make," or "raise"). 1 Am. L. J. 351.

— (how made). 16 Johns. (N. Y.) 287; 1 Munf. (Va.) 269.

LEVY AND COLLECT, (meaning of). 23 Iowa 410.

LEVY AND COLLECT THE PENALTY INCURRED, (in a statute). 4 Serg. & R. (Pa.) 88.

LEVY MONEY, (defined). 6 Halst. (N. J.) 227.

LEVYING WAR, (defined). 4 Sawy. (U. S.) 457; 6 Halst. (N. J.) 227.

— (what constitutes). 2 Abb. (U. S.) 364; 4 Cranch (U. S.) 75, 471.

— (what is not). 1 Am. L. J. 345.

— (in United States constitution). 2 Wheel. (N. Y.) Cr. Cas. XXIII.

— (equivalent to "levying an army"). 1 Am. L. J. 351.

LEWD, (defined). 9 Ired. (N. C.) L. 346.

LEWDNESS.—Licentiousness; an offence against the public economy, when of an open and notorious character; as by frequenting houses of ill-fame, which is an indictable offence, or by some grossly scandalous and public indecency, for which the punishment at common law is fine and imprisonment.

LEWDNESS, (in a statute). 12 Allen (Mass.) 177.

LEX.—Law. In the Roman law it was a resolution adopted by the whole Roman *populus* (patricians and plebeians) in the *comitia*, on the motion of a magistrate of senatorial rank, as a consul, a prætor, or a dictator.

LEX ÆLIA SENTIA.—The Ælian Sentian law, respecting wills, and restraining a master from manumitting his slaves in certain cases.

Lex æquitate gaudet (Jenk. Cent. 36): Law delights in equity.

LEX AGRARIA.—The Roman Agrarian law, which provided that no one should possess more than five hundred acres of land; and that commissioners should be appointed to divide among the poorer people what any one had in excess of that amount. See **AGRARIAN**.

Lex aliquando sequitur æquitatem (3 Wils. 119): Law sometimes follows equity.

LEX AMISSA.—One who is an infamous, perjured, or outlawed person. Bract. lib. 4, c. xix. 2. See **LIBERAM LEGEM AMITTERE**.

LEX ANGLIÆ.—The law of England; the common law; the curtesy of England. See **CURTESY**.

Lex Angliæ est lex misericordiæ (2 Inst. 315): The law of England is a law of mercy.

Lex Angliæ non patitur absurdum (9 Co. 22a): The law of England does not suffer an absurdity.

Lex Angliæ nunquam matris sed semper patris conditionem imitari partum judicat (Co. Litt. 123): The law of England rules that the offspring shall always follow the condition of the father; never that of the mother.

Lex Angliæ nunquam sine parlamento mutari potest (2 Inst. 218): The law of England cannot be changed but by parliament.

LEX APOSTATA.—A thing contrary to law.—*Jacob*.

LEX APPARENS.—Apparent or manifest law. See **LEX MANIFESTA**.

LEX AQUILIA.—The Aquilian law, which, among the Romans, regulated the compensation for killing or injuring the slave or beast of another.

LEX ATILIA.—The Atilian law, which, among the Romans, regulated the appointment of guardians.

LEX ATINIA.—The Atinian law, which, among the Romans, declared that the property in things stolen should not be acquired by prescription. Inst. 2, 6, 2.

LEX BARBARA.—The barbarian law. The laws of those nations that were not subject to the Roman empire were so called.—*Spel. Gloss.*

Lex beneficialis rei consimili remedium præstat (2 Inst. 689): A beneficial law affords a remedy for a similar case.

LEX BREHONIA.—The Brehon or Irish law, overthrown by King John. See **BREHON LAW**.

LEX BRETOISE.—The law of the ancient Britons, or Marches of Wales.—*Cowell*.

Lex citius tolerare vult privatum damnum quam publicum malum (Co. Litt. 132): The law will more readily tolerate a private loss than a public evil.

LEX COMITATUS.—The law of the county, or that administered in the county court, before the earl, or his deputy.—*Spel. Gloss.*

LEX COMMISSORIA.—A Roman law authorizing an agreement between a debtor and creditor, that property pledged by the debtor to secure the debt should become the absolute property of the creditor, if the debtor failed to pay at the time appointed.—*Abbott*.

LEX COMMUNIS.—The common law. See **JUS COMMUNE**.

LEX CORNELIA.—The Cornelian law which, among the Romans, provided remedies for injuries to person or property.

LEX CORNELIA DE FALSO.—The Cornelian law relative to forgery. D. 48, 10.

LEX CORNELIA DE SICARIIS ET VENEFCIO.—The Cornelian law relative to assassins and poisoners. D. 48, 8.

LEX DANORUM.—The law of the Danes. See **DANELAGE**.

Lex deficere non potest in justitia exhibenda (Co. Litt. 197): The law cannot be defective in dispensing justice.

LEX DERAISNIA.—The proof of a thing which one denies to be done by him, where another affirms it; defeating the assertion of his adversary, and showing it to be against reason or probability. This was used among the old Romans, as well as the Normans.—*Cowell*.

Lex dilationes semper exhorret (2 Inst. 240): The law always abhors delays.

LEX DOMICILII.—The law of the country where a person has his domicile (*q. v.*) 8 Sav. Syst.; and Westl. Pr. Int. Law, *passim*.

Lex est ubi æterno (Jenk. Cent. 34): Law is from everlasting. An expression to denote the antiquity of the law.

Lex est dictamen rationis (Jenk. Cent. 117): Law is the dictate of reason.

Lex est norma recti (Branch): Law is a rule of right.

Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria et contraria prohibet (Co. Litt. 319b): Law is the highest reason, which commands those things which are useful and necessary, and forbids what is contrary thereto.

Lex est sanctio sancta, jubens honesta et prohibens contraria (2 Inst. 587): Law is a sacred sanction, commanding what is right and prohibiting the contrary.

Lex est tutissima cassis; sub clypeo legis nemo decipitur (2 Inst. 56): Law is the safest helmet; under the shield of the law no one is deceived.

LEX ET CONSUETUDO PARLIAMENTI.—The law and custom (or usage) of parliament. The houses of parliament constitute a court not only of legislation, but also of justice, and have their own rules, by which the court itself and the suitors therein are governed. May Parl. Pr. (6 edit.) 33-61.

LEX ET CONSUETUDO REGNI.—The law and custom of the realm; one of the names of the common law.

LEX FALCIDIA.—The Falcidian law (*q. v.*)

Lex favet doti (Jenk. Cent. 50): The law favors dower.

Lex fingit ubi subsistit æquitas (11 Co. 90): The law makes use of a fiction where equity subsists. This is the maxim by which the law sought to reconcile theoretical consistency with substantial justice, but the latter is no longer considered to derive support from transparent fictions.

LEX FORI.—The law of the place of action. The forms of remedies, modes of proceeding, and execution of judgments are regulated by the laws of the place where the action is instituted; or, as the civilians uniformly express it, according to the *lex fori*. Lord Brougham, in *Don v. Lippmann*, 5 Cl. & F. 1, remarks: "The law on this point is well settled, that whatever relates to the remedy must be determined by the *lex fori*, the law of the country to the tribunals of which the appeal is made. This rule is clearly laid down in the *British Linen Company v. Drummond*, 10 Barn. & C. 903; *De la Vega v. Vianna*, 1 Barn. & Ald. 284; and in *Huber v. Steiner*, 2 Scott 304; 1 Hodges 206; 2 Bing. N. C. 202; 2 Dowl. Pr. C. 784; and 4 Moo. & S. 328. The only question is, whether the law to be enforced relates to the contract itself, or to the remedy. When both the parties reside in the country where the act is done, they look to the law of that country. The contract being silent as to the law by which it is to be governed, the *lex loci contractus* was probably considered at the time the rule; for the parties would not suppose that the contract might afterwards come before the tribunals of a foreign country. But it is otherwise when the remedy actually comes to be enforced.

The parties do not necessarily look to the remedy when they make the contract. They bind themselves to do what the law they live under requires; but as they bind themselves generally, it may be taken as if they had contemplated the possibility of enforcing it in another country. That is the lowest ground upon which to place the case. The inconveniences of a different course are manifest. The principles of law and the known course of the courts, render it necessary that the rules of precedent should be adopted, and that the parties should take the law as they find it when they come to enforce their contract; although there may be no difficulty in knowing the law of the place of the contract, and great difficulty in knowing that of the place of the remedy. The distinction exists with greater force as to the practice of the courts where the remedy is to be enforced. Because the contract has been made abroad, the form of action known in the foreign court must not be pursued in the courts where the contract is to be enforced."

LEX FORI, (when governs). 1 Gr. (N. J.) 68; 2 Hill (N. Y.) 201, 227.

LEX GOTHICA.—The Gothic law, or law of the Goths.—*Spel. Gloss.* See **LEX WISIGOTHORUM**.

LEX HOSTILIA DE FURTIS.—A Roman law, which provided that a prosecution for theft might be carried on without the owner's intervention. 4 Steph. Com. (7 edit.) 118.

LEX IMPERATORIA.—The Imperial or Roman law.

Lex intendit vicinum vicini facta scire (Co. Litt. 78 b): The law intends that one neighbor knows what another neighbor does.

Lex judicat de rebus necessario faciendis quasi re-ipsa factis: The law judges of things which must necessarily be done, as if actually done.

LEX JUDICIALIS.—An ordeal. Leg. H. 1.

LEX JULIA MAJESTATIS.—A law promulgated by Augustus Cæsar among the Romans, comprehending all the ancient laws that had before been enacted to punish transgressors against the state. 4 Steph. Com. (7 edit.) 151.

LEX LOCI.—Late Law-Latin for "the law of the place." It is chiefly used in the

following phrases: the *lex loci [celebrati] contractus* is the law of a place where a contract was made; *lex loci solutionis* is the law of the place of payment, *i. e.* of the place where, by the terms of the contract, payment is to be made; *lex loci actus* is the law of the place where a transfer of property or some similar formal act has been performed; *lex loci rei sitæ* is the same as *lex situs* (*q. v.*); *lex loci delicti* is the law of the place where a tort or wrong has been committed; *lex fori* is the law of the place where judicial proceedings have been taken to enforce an obligation, &c. See Westl. Pr. Int. Law *passim*; 8 Sav. Syst. *passim*. See, also, INTERNATIONAL LAW; JURISDICTION; LOCUS REGIT ACTUM.

LEX LOCI, (when governs). 2 Mass. 89; 10 Id. 260, 265; 4 Cow. (N. Y.) 510; 12 Johns. (N. Y.) 142; 14 Id. 333; 12 Wend. (N. Y.) 439; 3 Wheel. Cr. Cas. 479; 4 Desaus. (S. C.) 26. — (distinguished from "*lex fori*"). 6 Wend. (N. Y.) 485.

LEX LOCI CONTRACTUS.—

The law of the place of the contract.

§ 1. **Validity.**—Generally speaking, the validity of a contract is decided by the law of the place where it is made. If valid there, it is, by the general law of nations (*jure gentium*), held valid everywhere, by the tacit or implied consent of the parties. The rule is founded not merely in the convenience, but in the necessities of nations; for otherwise it would be impracticable for them to carry on an extensive intercourse and commerce with each other. The whole system of agencies, of purchases and sales, of mutual credits, and of transfers of negotiable instruments, rests on this foundation; and the nation which should refuse to acknowledge the common principles, would soon find its whole commercial intercourse reduced to a state like that in which it now exists among savage tribes.

§ 2. **Invalidity.**—The same rule applies to the invalidity of contracts; if void or illegal by the law of the place of the contract, they are generally held void and illegal everywhere. This would seem to be a principle derived from the very elements of natural justice. The Code expounds it: *Nullum enim pactum, nullam conventionem, nullum contractum, inter eos videri volumus subsecutum, qui contrahunt*

lege contrahere prohibente (l. i. tit. 14, l. 5). If void in its origin, it seems difficult to find any principle upon which any subsequent validity can be given to it in any other country. But there is an exception to the rule as to the universal validity of contracts: "No nation is bound to recognize or enforce any contracts injurious to its own interests, or its subjects."—*Wharton*.

LEX LOCI CONTRACTUS, (application of). 7 Cranch (U. S.) 115; 1 Gall. (U. S.) 371, 377, 441; 2 Mas. (U. S.) 151; 3 Conn. 472; 5 Day (Conn.) 320; 2 Bibb (Ky.) 207; 2 Cow (N. Y.) 626; 5 Id. 577; 2 Hill (N. Y.) 227; 3 Johns. (N. Y.) Ch. 190; 4 Johns. (N. Y.) 285; 11 Id. 195 n.; 14 Wend. (N. Y.) 249, 250; 23 Id. 100; 1 Bay (S. C.) 468; 2 Id. 377; 1 Tyler (Vt.) 7, 42; 3 Wheel. Am. C. L. 342, 390; 7 Id. 155; 1 Barn. & Ad. 284; 1 W. Bl. 258; 2 Hagg. Cons. 369, 371; Str. 733; 7 T. R. 243; 2 Ken Com. 454.

LEX LOCI REI SITÆ.—The law of the place where the thing is situate. It is sometimes also called *lex situs*. As to real or immovable property, the general rule of the common law is, that the laws of the place where such property is situate exclusively govern in respect to the rights of the parties, the modes of transfer, and the solemnities which should accompany them. The title, therefore, to real property can be acquired, passed, and lost only according to the *lex loci rei sitæ*. Story Conf. L. § 424. See, also, Westl. Pr. Int. Law.

LEX LOCI REI SITÆ, (application of). 10 Wheat. (U. S.) 192, 202; 6 Paige (N. Y.) 627, 630.

LEX LONGOBARDORUM. — The name of an ancient code in force among the Lombards. It contains many evident traces of feudal policy. It survived the destruction of the ancient government of Lombardy by Charlemagne, and is said to be still partially in force in some districts of Italy.—*Bouvier*.

LEX MANIFESTA.—Manifest or open law; the trial by duel or ordeal. The same with *lex apparens* (*q. v.*) In King John's charter (c. 38) and the articles of that charter (c. 28) the word *manifestam* is omitted.—*Burrill*.

LEX MERCATORIA.—The mercantile law, or general body of European usages in commercial matters. 1 Steph. Com. (7 edit.) 55.

LEX MERCATORIA, (what is). 2 Stark. Ev. 449.

Lex necessitatis est lex temporis. *i. e.* instantis (Hob. 159): The law of necessity is the law of the time, *i. e.* of the moment.

Lex neminem cogit ad vana seu inutilia peragenda (5 Co. 21): The law forces no one to do vain or useless things.

Lex neminem cogit ostendere quod nescire præsumitur (Lofit 569): The law compels no one to show that which he is presumed not to know.

Lex nemini operatur iniquum; nemini facit injuriam (Jenk. Cent. 22): The law works harm to no one; does injury to no one.

Lex nil facit frustra; nil jubet frustra (3 Buls. 279; Jenk. Cent. 17): The law does nothing vainly; commands nothing vainly.

Lex non a rege est violanda (Jenk. Cent. 7): The law is not to be violated by the king.

Lex non cogit ad impossibilia: The law does not force to impossibilities. This maxim does not apply where a thing is impossible on account only of the defendant's inability to perform a contract.

Lex non deficit in justitia exhibenda (Jenk. Cent. 31): The law does not fail in showing justice.

LEX NON COGIT AD VANA SEU INUTILIA, (applied). 71 Me. 148.

Lex non curat de minimis (Hob. 88): The law cares not about trifles.

Lex non favet delicatarum votis (9 Co. 58): The law favors not the wishes of the dainty.

Lex non intendit aliquid impossibile (12 Co. 89): The law intends not anything impossible.

Lex non patitur fractiones et divisiones statutorum (1 Co. 87): The law suffers no fractions and divisions of statutes.

Lex non præcipit inutilia, quia inutilis labor stultus (Co. Litt. 197): The law commands not useless things, because useless labor is foolish.

Lex non requirit verificari quod apparet curiæ (9 Co. 54): The law does not require that that which is apparent to the court should be proved.

LEX NON SCRIPTA.—The unwritten or common law, which includes general and particular customs, and particular local laws. See COMMON LAW, and 1 Steph. Com. (7 edit.) 40-68.

LEX ORDINANDI.—The same as *lex fori* (q. v.)

Lex plus laudatur quando ratione probatur (Litt. Epil.): The law is more

praised when it is approved by reason. For Lord Coke declares, "that the law is unknown to him that knoweth not the reason thereof; and that the known certainty of the law is the safety of all." 1 Inst. Epil.

Lex posterior derogat priori (Mack. Civ. L. 5): A later statute takes away the effect of a prior one. But the later statute must either expressly repeal, or be manifestly repugnant to the earlier one.

LEX PRÆTORIA.—The Prætorian law, by which every freedman who made a will was commanded to leave a moiety to his patron. Inst. 3, 8, 1.

Lex prospicit non respicit (Jenk. Cent. 284): The law looks forward, not backward.

LEX REGIA.—One of the *leges* supposed to have been enacted in the times of the early kings (*reges*) of Rome, and to which more especially was attributed the constitutional theory, that all power civil (*potestas*) and military (*imperium*) was vested in the emperor.—Brown.

Lex rejicit superflua, pugnantia, incongrua (Jenk. Cent. 133): The law rejects superfluous, contradictory, and incongruous things.

Lex reprobatur moram (Jenk. Cent. 35): The law dislikes delay.

Lex respicit æquitatem (Co. Litt. 24 b): The law pays regard to equity.

LEX RHODIA.—The Rhodian law, particularly the fragment of it on the subject of jettison, (*de jactu*), preserved in the Pandects. (Dig. 14, 2, 1. 3 Kent Com. 232, 283).—Bur-
rill.

LEX SACRAMENTALIS.—Purgation by oath. Leg. H. 1.

LEX SCRIPTA.—The written or statute law.

Lex scripta si cesset, id custodiri oportet quod moribus et consuetudine inductum est; et si qua in re hoc defecerit, tunc id quod proximum et consequens ei est; et si id non appareat, tunc jus quo urbs Romana utitur servari oportet (7 Co. 19): If the written law be silent, that which is drawn from manners and custom ought to be observed; and if that is in any matter defective, then that which is next and analogous to it; and if that does not appear, then the law which Rome uses should be followed. This maxim of Lord Coke is so far followed at the present day, that, in cases where there is no precedent of the English courts, the civil law is always heard with respect, and often, though not necessarily, followed.—Wharton.

Lex semper dabit remedium: The law will always give a remedy.

Lex semper intendit quod convenit rationi (Co. Litt. 78b): The law always intends what is agreeable to reason.

LEX SITUS.—Modern law Latin for "the law of the place where property is situated." The general rule is, that lands and other immovables are governed by the *lex situs*, i. e. by the law of the country in which they are situated. Westl. Pr. Int. Law 62. See **LEX LOCI REI SITÆ**.

Lex spectat naturæ ordinem (Co. Litt. 197b): The law has regard to the order and course of nature.

Lex succurrit ignorantī (Jenk. Cent. 15): The law assists the ignorant.

LEX TALIONIS.—The law of retaliation. The law of retaliation was common among all ancient nations, as the best means of protection; but, in progress of time, when manners had assumed a milder tone, bodily injuries were brought into the civil courts, and the punishment to be inflicted, or the satisfaction to be rendered, was left entirely to the judge. 4 Broom & H. Com. 8.

LEX TERRÆ.—The law and custom of the land.

LEX TERRÆ, (includes what). 2 Ld. Raym. 1114 n.

Lex uno ore omnes alloquitur (2 Inst. 184): The law speaks to all with the same mouth.

LEX WALLENSICA.—The Welsh law.

LEX VISIGOTHORUM.—The law of the Visigoths, or Western Goths who settled in Spain; first reduced to writing A. D. 466. A revision of these laws was made by Egigas.—*Spel. Gloss.; Burrill.*

LEY, or LOL.—Law; the oath with compurgators; also, a meadow.

LEY CIVILE.—The civil or Roman law.

LEY GAGER.—A wager of law; one who commences a lawsuit.—*Cowell.*

LEYERWITE.—See **LAIRWITE**.

LEZE-MAJESTY.—An offense against sovereign power; treason; rebellion.

LIABILITY.—The condition of being actually or potentially subject to an obligation; is used either generally, as including every kind of obligation, or, in a more special sense, to denote inchoate, future, unascertained or imperfect obligations, as opposed to debts, the essence of

which is that they are ascertained and certain. (See **DEBT**.) Thus, when a person becomes surety for another, he makes himself liable, though in what obligation or debt the liability may ultimately result is unascertained; and when a person becomes a member of a joint stock company he makes himself liable for the debts of the company, to be ascertained when it is wound up. In *Williams v. Harding* (L. R. 1 H. L. 9), the House of Lords decided that the liability of a shareholder of a solvent company was a "debt" within the meaning of the Bankruptcy Act, 1861; the reasons given for this decision are somewhat technical. See **LIMITATION OF LIABILITY**.

LIABILITY, (defined). 3 Dill. (U. S.) 532; 5 Me. 237.

— (in bankrupt act). 115 Mass. 52.

LIABLE, (in a statute). 2 Low. (U. S.) 354.

LIARD.—A farthing.

LIBEL.—

§ 1. In the widest sense of the word, a libel is a published writing, picture, or similar production, of such a nature as to immediately tend to occasion mischief to the public, or to injure the character of an individual. (*Stark. Sland.* cited in *Shortt Copyr.* 297, n. (a); *Bradlaugh v. Reg.*, 3 Q. B. D. 627.) Hence, libels are of two kinds, public and private.

§ 2. A public libel is one which tends to produce evil consequences to society, because it is either blasphemous (*Shortt Copyr.* 297; *Steph. Cr. Dig.* 97; see **BLASPHEMY**), or obscene (*q. v.*) (*Shortt Copyr.* 311), or seditious (*q. v.*) (*Id.* 319; *Steph. Cr. Dig.* 55). The publication of such a libel is a misdemeanor. To this class also belong libels on legislative bodies, which are contempts or breaches of privilege; libels on courts of justice, or on persons concerned in proceedings before courts, which are contempts of court (*q. v.*) (*Shortt Copyr.* 344, 357), and libels on foreign rulers, ambassadors, &c. *Id.* 379; *Steph. Cr. Dig.* 59.

§ 3. Private—Defamatory.—Private libels are of two kinds. A defamatory libel, or a libel on the character of an individual, is a false and malicious writing, picture, or the like, published concerning a certain person, and which either brings

him within the danger of the law by accusing him of a crime, or has a tendency to injure him in his profession or calling, or by holding him up to scorn, ridicule, hatred, or execration, impairs him in the enjoyment of general society, (Shortt Copyr. 384, 391,) or by blackening the memory of one who is dead, tends to provoke a breach of the peace. (*Id.* 419; 3 Russ. Cr. 178, 205; Steph. Cr. Dig. 184.) A defamatory libel is a civil injury, giving rise to a right of action for damages by the person defamed. It is also a misdemeanor, and makes the offender punishable criminally by fine and imprisonment. (Shortt Copyr. 499; Steph. Cr. Dig. 184 *et seq*) The question whether a publication is libellous or not is one of mixed fact and law, and rests with the jury, subject to the judge's direction as to the law. Fox's Act (32 Geo. III. c. 60) made this rule applicable to criminal prosecutions for libel. See *Thomas v. Williams*, 14 Ch. D. 864. See, also, FACT, § 3.

§ 4. **Libel to property.**—A libel may be injurious to a person's property or trade. Thus, if a person falsely and maliciously publishes statements calculated to injure the property (*e. g.* the business) of another, this is a libel, and not only gives rise to a right of action for damages, but may also be restrained by injunction. *Saxby v. Easterbrook*, 3 C. P. D. 339. See **INNUEUDO**; **JUSTIFICATION**; **MALICE**; **PRIVILEGE**; **PUBLICATION**; **SLANDER**.

§ 5. **Ecclesiastical and admiralty practice.**—In the Admiralty and Ecclesiastical Courts, the first plea in a cause (not being a criminal cause) is termed the libel, and runs in the name of the party or his proctor, who alleges and propounds the facts on which his demand is based. See **PLEA**.

LIBEL, (defined). 5 Biss. (U. S.) 330; 7 Conn. 268; 27 *Id.* 61; 8 Blackf. (Ind.) 426; 4 Mass. 163; 2 Pick. (Mass.) 118; 7 Cow. (N. Y.) 613; 1 Den. (N. Y.) 347; 3 Johns. (N. Y.) Cas. 337, 354; 25 Wend. (N. Y.) 186, 193; 4 McCord (S. C.) 317; 3 Crim. L. Mag. 178.

— (what constitutes). 3 How. (U. S.) 266, 291; 4 Mas. (U. S.) 115; 2 Den. (N. Y.) 303; 15 Mees. & W. 318, 344.

— (distinguished from "slander"). 14 Vr. (N. J.) 26.

— (proof of malice). 3 How. (U. S.) 266.

— (when malice is implied). 4 Wend. (N. Y.) 118.

LIBEL OF ACCUSATION.—In the Scotch practice, the written charge against one criminally accused.

LIBELLANT.—The suitor plaintiff who files a libel in an admiralty or ecclesiastical case.

LIBELLEEE.—The suitor defendant against whom a libel has been filed.

LIBELLER, COMMON, (in a declaration). 3 Pa. 66.

LIBELLI FAMOSI.—Scurrilous publications of a libellous nature.

LIBELLUS CONVENTIONIS.—In the civil law, the statement of a plaintiff's claim in a petition presented to the magistrate, who directed an officer to deliver it to the defendant.

LIBER.—(1) A book; a main subdivision of a literary work. (2) Free; exempt from the control of another or the obligation of service to him; free from a burden or charge.

LIBER ASSISARUM.—The book of assizes or pleas of the crown, being the fifth part of the year-books.

LIBER ET LEGALIS HOMO.—A free and lawful man. One worthy of being a juror.

LIBER FEUDORUM.—A code of the feudal law, compiled by direction of the Emperor Frederick Barbarossa, and published at Milan, A. D. 1170.—*Wharton*.

LIBER HOMO.—A freeman.

LIBER JUDICIALIS OF ALFRED.—Alfred's dome-book. See **DOMESDAY**.

LIBER NIGER DOMUS REGIS.—The black book of the king's household. The title of a book in which there is an account of the household establishment of King Edward IV. and of the several musicians retained in his service, as well for his private amusement as for the service in his chapel.—*Encycl. Lond.*

LIBERA.—A livery or delivery of so much corn or grass to a customary tenant, who cut down or prepared the said grass or corn, and received some part or small portion of it as a reward or gratuity.—*Cowell*.

LIBERA BATHLLA.—A free boat; a right of fishing.

LIBERA CHASEA HABENDA.—A judicial writ granted to a person for a free chase belonging to his manor, after proof made by inquiry of a jury that the same of right belongs to him.

LIBERA PISCARIA.—A free fishery.

LIBERA WARA.—A free measure of ground.

LIBERAM LEGEM AMITTERE.—To lose one's free law (called the "villainous judgment"); to become discredited or disabled as juror and witness; to forfeit goods and chattels and lands for life; to have those lands wasted, houses razed, trees rooted up, and one's body committed to prison. It was anciently pronounced against conspirators, but is now disused, the punishment substituted being fine and imprisonment. Hawk. P. C. 61 c. lxxii., § 9; 8 Inst. 221.

Liberata pecunia non liberat offerentem (Co. Litt. 207): Money being restored, does not set free the party offering.

LIBERATE.—When execution has been issued on a statute staple by a writ in the nature of an extent, the lands, tenements and chattels of the consor or debtor are not delivered to the consuee or creditor, but are seized by the sheriff "into the king's hands," and in order to get possession of them the consuee must sue out a writ called a "liberate," which commands the sheriff to deliver them into his hands. Lidd Pr. 1087; 2 Wms. Saund. 221. See **EXTENT**.

LIBERATIO.—Money, meat, drink, clothes, &c., yearly given and delivered by the lord to his domestic servants.—*Blount*.

LIBERATION.—In the civil law, payment.

LIBEROS ET LEGALES HOMINES, (as meaning freeholders). Cam. & N. (N. C.) 38.

LIBERTAS.—Liberty; freedom; a privilege; a franchise.

LIBERTAS ECCLESIASTICA.—Church liberty, or ecclesiastical immunity.

Libertas est naturalis facultas ejus quod cuique facere libet, nisi quod de jure aut vi prohibetur (Co. Litt. 116): Liberty is that natural faculty which permits every one to do any thing he pleases except that which is restrained by law or force.

Libertas inestimabilis res est (D. 50, 17, 106): Liberty is an inestimable thing; a thing above price.

Libertas non recipit æstimationem (Bract. 14): Freedom does not admit of valuation.

Libertas omnibus rebus favorabilior est (D. 50, 17, 122): Liberty is more favored than all things.

LIBERTATE PROBANDA.—See **DE LIBERTATE PROBANDA**.

Libertates regales ad coronam spectantes ex concessione regum a coro-

na exierunt (2 Inst. 496): Royal franchises relating to the crown have emanated from the crown by grant of kings.

LIBERTATIBUS ALLOCANDIS.—See **DE LIBERTATIBUS ALLOCANDIS**.

LIBERTATIBUS EXIGENDIS IN ITINERE.—An ancient writ whereby the king commanded the justices in eyre to admit of an attorney for the defense of another's liberty. Reg. Orig. 19.

LIBERTICIDE.—A destroyer of liberty.

LIBERTIES.—Privileged districts exempt from the sheriff's jurisdiction. See 13 and 14 Vict. c. 105, and **JAIL LIBERTIES**.

LIBERTIES AND FRANCHISES, (in a statute). 11 East 175.

Libertinum ingratum leges civiles in pristinam servitutem redigunt; sed leges Angliæ semel manumissum semper liberum judicant (Co. Litt. 137): The civil laws reduce an ungrateful freedman to his original slavery, but the laws of England regard a man once manumitted as ever after free.

LIBERTY.—

§ 1. In its general sense, a liberty is an authority to do something which would otherwise be wrongful or illegal. Thus, if a man grants to another trees growing on land, that implies a liberty to cut them and carry them away. (Rolle Abr., Graunt, Z. 16. See **FREE ENTRY**, **EGRESS AND REGRESS**.) Such a liberty may be either personal to the grantee, or it may be inherent or annexed to property so as to pass with it on an assignment. See **LICENSE**.

§ 2. "Liberty" is also used as equivalent to "franchise" (*q. v.*) both as denoting a right and as denoting the place where the right is exercisable. Thus, the Liberty of the Savoy is a place subject to a franchise. Viner Abr., Franchise, B. 8. As to writs of execution, see **NON OMITTAS**.

LIBERTY, (defined). 3 Conn. 467.

— (in a deed). 4 Barn. & C. 485.

LIBERTY OF SPEECH.—Freedom to orally express one's sentiments, uncontrolled by any censorship or restrictions of government beforehand. Like the liberty of the press, this liberty is not an exemption from punishment or damages after the act; nor does it give any right of speaking to the interruption of lawful assemblies, or to the disturbance

of the peace. It only means that government shall not inquire beforehand what an individual intends to say, to restrict him.—*Abbott*.

LIBERTY OF THE PRESS.—

Freedom to print and publish the truth, from good motives and for justifiable ends. (3 Johns. (N. Y.) Cas. 394.) This right is secured by the first amendment to the United States constitution. The abuse of the right is punished criminally by indictment, civilly by action.

LIBERTY OF THE RULES.—A privilege to go out of the Fleet and Marshalsea prisons within certain limits and there reside. Abolished by 5 and 6 Vict. c. 22.

LIBERTY TO HOLD PLEAS.—The liberty of having a court of one's own; thus, certain lords had the privilege of holding pleas within their own manors.

LIBERTY TO PURCHASE, (in a covenant). 1 Edw. (N. Y.) 1; 8 Wheel. Am. C. L. 239.

Liberum corpus nullam recipit æstimationem (Dig. 9, 3, 7): The body of a freeman does not admit of valuation.

LIBERUM MARITAGIUM.—Frank-marriage (*q. v.*)

LIBERUM SERVITUTUM.—Free (*i. e.* certain) service. *See* SERVICE.

LIBERUM SOCAGIUM.—Free socage.

LIBERUM TENEMENTUM.—A frank tenement (*q. v.*) or freehold. The plea or avowry of *liberum tenementum* was the only case of usual occurrence in more modern practice in which the allegation of a general freehold title in lieu of a precise allegation of title was sufficient. It was sustained by proof of any estate of freehold, whether in fee, in tail, or for life only, and whether in possession or expectant on determination of a term of years, but it did not apply to the case of a freehold estate in remainder or reversion, expectant on a particular estate of freehold, nor to copyhold tenure. Steph. Pl. (7 edit.) 257.

LIBERUM TENEMENTUM, (when defendant may plead). 9 Wend. (N. Y.) 160; 8 Wheel. Am. C. L. 193; 1 Barn. & C. 489.

LIBLAC.—Witchcraft, particularly that kind which consisted in the compounding and administering of drugs and philtres. Leg. Athel. 6.

LIBLACUM.—Bewitching any person; also, a barbarous sacrifice. Leg. Athel. 6.

LIBRA.—In old English law, a pound; also, a sum of money equal to a pound sterling.

LIBRATA TERRÆ.—A portion of ground containing four oxgangs, and every oxgang fourteen acres.—*Cowell*. This is the same with what in Scotland was called *pound-land* of old extent.—*Wharton*.

LIBRIPENS.—A civil law term for a scalesman.

LIBRA ARSA.—A pound of money burned, *i. e.* melted, or assayed by melting, to test its purity. *Libra arsa et pensata*, pounds burned and weighed.—*Spel. Gloss.*

LIBRA NUMERATA.—A pound of money counted instead of being weighed.—*Spel. Gloss.*

LIBRA PENSA.—A pound of money by weight. It was usual in former days, not only to sell the money, but to weigh it; because many cities, lords, and bishops, having their mints, coined money, and often very bad money too, for which reason, though the pound consisted of twenty shillings, they weighed it.—*Encycl. Lond.*

LICENSE.—

§ 1. In its general sense, a license is an authority to do something which would otherwise be inoperative, wrongful or illegal. (*See* AUTHORITY; LIBERTY.) Thus, a lease frequently contains a covenant by the lessee not to assign the term without the lessor's license.

§ 2. **Land.**—In the law of real property, a license is generally an authority to do an act which would otherwise be a trespass. A license passes no interest, (Gale Easm. 15; Shelf. R. P. Stat. 59,) and, therefore, if A. grants to B. the right to fasten barges to moorings in a river, this does not amount to a demise, nor give the licensee an exclusive right to the use of the moorings, nor render him liable to be rated as the occupier of part of the bed of the river. (*Watkins v. Overseers, &c.*, L. R. 3 Q. B. 350.) Hence, also, if a person by deed grants an exclusive license for the use of land, this may amount to a lease, or to the grant of an incorporeal hereditament. *Hooper v. Clark*, 8 Best & S. 150; L. R. 2 Q. B. 200. *See* LEASE, § 1.

§ 3. **Revocable — Irrevocable.**—A mere license is always revocable, but when a license comprises, or is connected with, a grant of an interest, it is generally irrevocable. (*Wood v. Leadbitter*, 13 Mees. & W. 838; Gale Easm. 61.) Thus, a license by A. to hunt in his park is revocable, but a license to hunt and take away the deer

when killed, is in truth a grant of the deer with a license annexed to come on the land, and if the grant is good the license is irrevocable. (Shelf. R. P. Stat. 60.) So a license may be irrevocable if granted for valuable consideration. Browne Div. 56

§ 4. **Marriage license.**—A marriage license is an authority enabling two persons to be married.*

§ 5. **Intoxicating liquors, &c.**—Licenses for the manufacture and sale of intoxicating liquors are of different kinds, according to the authorities by whom they are granted.†

*Such licenses are of three kinds in England. A *special* license is granted by the Archbishop of Canterbury, and enables the parties to be married in any church or chapel or other meet and convenient place. An *ordinary* license is granted by any archbishop or bishop for the marriage of persons within his diocese in a church or chapel in which banns may lawfully be published. (Browne Div. 56, 68.) A *superintendent registrar's* license is one granted by the superintendent registrar of the district in which the parties, or one of them, reside, authorizing the solemnization of a marriage between them according to the rites of the Church of England, or the usages of the Quakers or Jews, &c., or such form as they think fit to adopt. *Id.* 65. See MARRIAGE; MARRIAGE ACTS.

† A *magistrate's* or *justice's* license is granted, in England, as a kind of certificate that the applicant is a proper person to be intrusted with the sale of intoxicating liquors, and that the "premises" which he occupies are fit for the purpose. In *counties*, new licenses are granted by the justices present at the meeting held by them every year, and called "the general annual licensing meeting," and must be confirmed (except in the case of outdoor licenses) by a standing committee, appointed every year from among themselves by the justices at quarter sessions, and called "the county licensing committee." (Act of 1828, § 1; Act of 1872, § 37; Act of 1874, § 32.) In *boroughs*, licenses are granted by "the borough licensing committee," appointed every year from among themselves by the borough justices, and confirmed by the whole body of borough justices, or if the borough has not ten justices, licenses are granted by the borough justices, and confirmed by a "joint committee" composed of six borough and county justices. Act of 1872, § 38.

The magistrate's license entitles the holder to take out the corresponding excise license, which is granted by the commissioners of inland revenue, and is a mode of levying a tax on the sale of liquors and refreshments.

Both magistrates' and excise licenses require to be renewed every year, and are of various descriptions, according to the number and kind of liquors authorized to be sold under them, (the public-house license; the beer license, &c.,) and to the question whether the liquor is to be consumed on or off the premises, (indoor and outdoor licenses, shop-keepers' wine license, &c.,)

LICENSE, (defined). 4 Blatchf. (U. S.) 206; 3 Wall. (U. S.) 441; 9 Wheat. (U. S.) 1, 213; 50 Ga. 530, 537; 11 Mass. 533, 537; 24 Mich. 279; 4 Sandf. (N. Y.) Ch. 72; 44 Superior (N. Y.) 136, 140; 15 Wend. (N. Y.) 380; 4 Watts (Pa.) 232; 3 Kent Com. 452.

— (what is). 11 Mass. 533; 14 *Id.* 403; 4 Johns. (N. Y.) 418; 15 Wend. (N. Y.) 380, 390, 392; 5 Car. & P. 460; 4 East 469; Palm. 71; Say. 3.

— (what is not). 9 Johns. (N. Y.) 35; 3 Nev. & M. 691.

— (distinguished from "grant"). 3 Duer (N. Y.) 255, 258.

— (distinguished from "easement"). 4 Sandf. (N. Y.) Ch. 72; 15 Wend. (N. Y.) 380; 4 Watts (Pa.) 232; Ang. Watere. § 285; 3 Kent Com. 452.

and to the time during which they authorize the consumption (the six-day license, *i. e.* excluding Sundays; the early closing license, &c. For an enumeration of the various licenses, see Lely & Foulkes's Licensing Acts 7.) A provisional license may also be granted in respect of premises about to be constructed or in course of construction. (Act of 1874, § 22.) An additional license is one granted to the holder of a "strong beer dealer's wholesale excise license," and authorizes him to sell beer by retail for consumption off the premises. Stats. 26 and 27 Vict. c. 33, § 1; 43 Vict. c. 6.

There are also excise licenses granted without the necessity of a magistrate's license, *e. g.* the refreshment house license, (23 Vict. c. 27, § 6,) which does not authorize the sale of intoxicating liquors, (Lely & Foulkes 10,) and the licenses to brewers, wholesale beer dealers, maltsters, distillers, dealers in foreign wines, manufacturers of and dealers in tobacco, &c. Stat. 6 Geo. IV. c. 81, and the other acts mentioned in the index to the statutes, title "Brewer."

Among miscellaneous licenses, or licenses not granted in the usual way by justices or the excise authorities, may be mentioned the "occasional license" in the strict sense of the word, namely, a license granted by the excise authorities, on the written consent of a justice, to a person already licensed to sell liquors to be consumed on the premises, authorizing the sale of them at some other place between certain hours, and on a special occasion (*e. g.* a fair, race, ball, &c.) specified in the license. (25 Vict. c. 22, § 13; 26 and 27 Vict. c. 33, §§ 19, 20; 27 Vict. c. 18, § 5.) The term "occasional license" is also applied to an exemption granted by the commissioners of police or other "local authority" (Act of 1872, § 26) of the district, exempting the person to whom it is granted from the rules relating to the closing of premises on a special occasion (*e. g.* a fête or ball) and during certain hours specified in the license. Act of 1872, § 20. See FORM; Lely & Foulkes 192. As to the hours of closing, see Act of 1874, § 3.

There are also numerous other varieties of license, such as *game* licenses, (see GAME,) licenses for making and selling *gunpowder*, fireworks, &c., licenses for *race-courses* in the suburbs of London, (Stat. 42 and 43 Vict. c. 18,) for the reception of *lunatics*, for retreats for *habitual drunkards*, &c. *Id.* c. 19. See DRUNKENNESS, § 3.

LICENSE, (distinguished from "interest in land"). 4 Mau. & Sel. 562; 1 Chit. Gen. Pr. 238.

— (synonymous with "permit"). 5 Blackf. (Ind.) 155.

— (power to, distinguished from "power to tax"). 2 Halst. (N. J.) 66, 67.

— (in an agreement). 10 Heisk. (Tenn.) 322.

— (in a statute). 22 How. (U. S.) 227, 240; 3 Wall. (U. S.) 441, 443; 9 Wheat. (U. S.) 213; 42 Iowa 673.

— (how granted). 7 Taunt. 374.

— (how pleaded). 2 Nott. & M. (S. C.) 138; 8 Wheel. Am. C. L. 199; 8 Taunt. 31, 596.

— (when may be by parol). 9 Pick. (Mass.) 415; 2 Marsh. 360, 551; 2 Saund. 113.

LICENSE, APPOINTMENT OR AUTHORITY, (in a statute). 100 Mass. 206; 108 Id. 294.

LICENSE FEE, (distinguished from "tax"). 11 Mich. 43, 347; 7 How. (N. Y.) Pr. 81.

LICENSE, TAX AND REGULATE, (in city charter). 43 Iowa 524; 51 Mo. 122; 11 Am. Rep. 440; 22 Id. 261.

LICENSED PILOT, (in pilotage act). 60 N. Y. 249.

LICENSEE.—A person to whom a license has been granted.

LICENSEE OF PATENT, (defined). 4 Blatchf. (U. S.) 211; 1 Fish. (U. S.) Pat. Cas. 327.

LICENTIA CONCORDANDI.—Leave to agree. That license for which the king's silver was paid on passing a fine. See FINE, § 9.

LICENTIA LOQUENDI.—An imparlance (*q. v.*)

LICENTIA SURGENDI.—License to arise, which was a liberty or space of time anciently given by the court to a tenant to arise out of his bed, who was essoined *de malo lecti* in a real action; and it was also the writ thereupon. Fleta l. 6, c. x. See ESSOIGN.

LICENTIA TRANSFRETANDI.—See DE LICENTIA TRANSFRETANDI.

LICENTIATE.—One who has license to practice any art or faculty.

LICENTIOUSNESS.—(1) The doing as one wills, regardless of the rights of others; (2) lewdness (*q. v.*)

LICET.—(1) It is lawful, or permitted by law; (2) although.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio precedens quæ sortiatur effectum, interveniente novo actu (Bac. Max. 60, 61, r. 14): Although a disposition of a future interest is void, yet a precedent declaration can be made, which, a new act intervening, may have an effect.

LICET SÆPIUS REQUISITUS.—Although often requested. A phrase used in

Latin pleadings the translation being still in common use.

Licita bene miscetur, formula nisi juris obstet (Bac. Max. 94, r. 24): Things permitted are properly joined, unless the form of law oppose.

LICITATION.—The act of exposing to sale to the highest bidder.—*Encycl. Lond.*

LICKING OF THUMBS.—An ancient formality by which bargains were complete.

LIDFORD LAW.—A sort of lynch law, whereby a person was first punished and then tried.—*Wharton*.

LIE.—To subsist; to exist; to be sustainable, &c. Thus, to say, "an action will lie," signifies that an action may be sustained, or that there is ground upon which to found it. So, a right is often said to lie in franchise, grant, or livery, according as it is founded or derived. See GRANT; LYING IN FRANCHISE.

LIEGE.—In old records, full; absolute; perfect; pure. Liege widowhood was pure widowhood.—*Cowell*.

LIEGE HOMAGE.—An acknowledgment which included fealty and the services consequent upon it. 1 Br. & H. Com. 442. See HOMAGE, § 3.

LIEGE LORD.—A sovereign; a superior lord.

LIEGE NATURALIZED SUBJECTS, (in a charter). 3 Serg. & R. (Pa.) 34.

LIEGE POUSTIE.—A state of health which gave a person lawful power in Scotland to dispose of his heritable property either *causd mortis* or otherwise. But the Scotch law of deathbed has now been abolished by 34 and 35 Vict. c. 81, which enacts that no deed, instrument, or writing made by any person who shall die after the passing of that act shall be liable to challenge or reduction *ex capite lecti*.—*Wharton*.

LIEGEMAN.—He that oweth allegiance.—*Cowell*.

LIEGER, or LEGER.—A resident ambassador.

LIEGES, or LIEGE PEOPLE.—Subjects.

LIEN.—FRENCH: *lien*; LATIN: *ngamen*, from *ligare*, to bind. Formerly it denoted *obligatio generalis*. "Lien is a word of two significations—Prædial lien, as a bond, covenant or contract; and real lien, a judgment, statute, recognizance, or an original against an heir, which oblige and affect the land." (*Termes de la Ley*, s. 1.) or a warranty. (Co. Litt. 376 b.) This sense is now obsolete.

§ 1. A right by which a person is entitled to obtain satisfaction of a debt by means of property belonging to the person indebted to him. A lien is therefore a species of security (*see* SECURITY; RIGHT), but differs from a mortgage, charge or the like in this respect, that in the case of a mortgage or charge the origin of the debt is immaterial, (*e. g.* it may be a loan, a debt for goods sold, &c.,) while a lien is always a security on property which is or has been the subject of a transaction between the parties. Hence, the civilians call the debt giving rise to a lien, a *debitum connexum*. (Thibaut Pand. § 224.) Thus, if A. sells lands or goods to B., A. has a lien on them for the unpaid purchase-money, unless he expressly or impliedly waives his right. Dart Vend. & P. 729; Benj. Sales 656.

With reference to their origin, liens arise either by operation of law or by agreement between the parties.

§ 2. Liens by operation of law.—Liens arising by operation of law (liens by implication, implied liens,) are those which arise from the relation of the parties, without express or tacit stipulation, and either by the rules of the common law (as in the case of the vendor's lien for purchase-money mentioned above), by the rules of equity (equitable liens), or under the provisions of a statute (statutory liens), of which two latter classes examples will be found below.

§ 3. Conventional liens.—Liens by agreement between the parties (conventional liens) are those created intentionally in cases where the relation between the parties is not such as to give rise to a lien by operation of law, as where a carrier stipulates for a general lien (*infra*, § 4,) on goods sent him for transmission. (Wiltshire Iron Co. v. G. W. R. Co., L. R. 6 Q. B. 101, 776.) The intention to create the lien may be express, or it may be implied, *e. g.* from a previous course of dealings between the parties. Sm. Merc. L. 561. *See* IMPLIED, § 2.

With reference to the nature of the right which they confer on the creditor, liens are of two kinds—

§ 4. Retaining, or possessory lien.—A retaining (or possessory) lien is the

right of the creditor to retain possession of his debtor's property until his debt has been satisfied. (As to the difference between a lien and a pledge, *see* Donald v. Suckling, L. R. 1 Q. B. 604.) Thus, if a person takes a watch to a watchmaker to be repaired, the watchmaker has a lien on the watch for his remuneration, *i. e.* has the right of retaining it until his reasonable charges are paid. In this instance the lien is a *particular lien*, because it exists only as a security for the particular debt incurred in respect of the watch itself, while a *general lien* is available as a security for all debts arising out of similar transactions between the parties. Thus, if an attorney has possession of title-deeds belonging to his client, he has a general lien on them, *i. e.* he is entitled to retain them until he is paid not only his charges in respect of the deeds themselves, but also the whole amount owing to him from the client for professional services up to that time. (Dan. Ch. Pr. 1715.) A solicitor's lien on a fund recovered in an action or suit extends only to the costs of that particular action or suit, and can be actively enforced. (*Id.* 1729. *See, also*, CHARGE, § 5.) General liens exist only in pursuance of a usage to that effect in the particular trade or business, the principal instances being in the case of solicitors, bankers, innkeepers, (Mulliner v. Florence, 3 Q. B. D. 484,) wharfingers and factors. Sm. Merc. L. 562.

§ 5. A charging lien is the right to charge property in another's possession with the payment of a debt or the performance of a duty: an instance of this is the equitable lien of a vendor of land for the unpaid purchase-money. (Wms. Real Prop. 414; 1 White & T. Lead. Cas. 263; Dart Vend. & P. 729. As to liens of partners, *see* Lindl. Part. 679.) A charging lien can be enforced by bringing an action (or in some jurisdictions by filing a bill in equity) for a sale of the property. (Walker v. Ware, &c., Rail. Co., L. R. 1 Eq. 195.) The important distinction between a possessory and a charging lien is that in the case of the former if the creditor gives up possession of the property, he loses his lien, while it follows from the nature of a charging lien that the property need not be in the creditor's possession.

§ 6. **Maritime liens.**—There are also various forms of maritime lien, or lien on a ship, freight, &c., (Fish. Mort. 168 *et seq.*) some of which are possessory and some charging. Thus, a shipowner has, independently of contract, a possessory lien on goods carried in his ship for the freight due in respect of them. (Maud & P. Mer. Sh. 294.) If a ship is injured in a collision by the negligence of the other ship, the owners of the former have a maritime (charging) lien on the latter for the damage (The Charles Amelia, L. R. 2 A. & E. 330); so the master of a ship has a maritime (charging) lien on the ship and freight for his wages and disbursements (Maud & P. Mer. Sh. 91; *see, also*, Kingston v. Wendt, 1 Q. B. D. 367); this is an instance of a statutory lien, or lien created by statute. A maritime charging lien can be enforced by proceedings in admiralty, in which distress and sale of the ship may be ordered. Maud & P. Mer. Sh. 189. *See* CHARGE.

LIEN, (defined). 24 Me. 214; South. (N. J.) 441; 6 Wheel. Am. C. L. 444; 2 Kent Com. 634.

— (what is). 1 Hilt. (N. Y.) 292; 26 Wend. (N. Y.) 467.

— (what is not). 74 N. Y. 467, 573; 5 Month. Law Rep. 19.

— (of banks on their stock). 17 Serg. & R. (Pa.) 235.

— (of common carrier on goods in his possession). 2 Halst. (N. J.) 108.

— (of corporations upon the shares of stockholders). Ang. & A. Corp. § 355.

— (distinguished from "claim," or "demand"). 49 Barb. (N. Y.) 244.

— (distinguished from "judgment"). South. (N. J.) 441.

— (in United States bankruptcy act). 2 Sandf. (N. Y.) 494, 507.

— (in revised code, § 1980). 46 Ga. 568.

— (in act of 1867, § 44). 81 Pa. St. 122, 132.

— (how created). 1 Hilt. (N. Y.) 292.

LIEN, GENERAL, (distinguished from "particular"). 2 Kent Com. 634.

LIEN, MECHANICS' (what will discharge). 14 Wend. (N. Y.) 201.

LIEN OF A COVENANT.—The commencement of a covenant stating the names of the covenantors and covenantees, and the character of the covenant, whether joint or several. — *Wharton*.

LIEN OR PLEDGE, (what is). 10 Pick. (Mass.) 528.

LIEN, SOLICITOR'S, (superseded by taking security). 16 Ves. 275.

LIEU.—Place; room. It is only used with *in*; *in lieu*, instead of.—*Encycl. Lond.*

LIEU CONUS.—A castle, manor, or other notorious place, well known, and generally taken notice of by those who dwell about it. 2 Lil. Abr. 641.

LIEUTENANT.—Originally, a deputy; *locum tenens*; one who acts by vicarious authority. At the present time, however, lieutenant has a narrower signification. Thus, among civil officers we have "lieutenant governors," who, in certain cases, perform the duties of governors, "lieutenants of police," etc. Among military men, "lieutenant-general" is the title of a general one degree above major-general. "Lieutenant-colonel" is the officer between the colonel and the major. "Lieutenant," simply, signifies the officer next below a captain. In the navy, a "lieutenant" is the second officer next in command to the captain of a ship.—*Bouvier*.

LIFE.—*See* DEATH; INSURANCE, § 7; TENANT FOR LIFE.

LIFE, (bequest of a chattel for). 3 Meriv. 194.

— (devise for). 1 Day (Conn.) 299; 5 Watts (Pa.) 103, 265; 1 Hill (S. C.) Ch. 374; 2 Munf. (Va.) 479; 6 Id. 455; 2 Vern. 331.

— (gift of chattel for). 5 Johns. (N. Y.) Ch. 22.

LIFE ANNUITY.—An annual income or payment during the continuance of any given life or lives. *See* ANNUITY.

LIFE ASSURANCE.—*See* INSURANCE, § 7.

LIFE, DURATION OF.—The law knows no presumption regarding the duration of human life. The matter is one of evidence, and is for the jury. Nevertheless, there is a presumption of death after seven years' absence unaccounted for. (Doe v. Nepean, 2 Mees. & W. 894.) Similarly, there is no presumption of law with regard to the survivor of persons all of whom perish in a common calamity. Wing v. Angrave, 8 H. L. C. 183. *See* DEATH, § 3.

LIFE ESTATE.—*See* TENANT FOR LIFE.

LIFE ESTATE, (what words in a will create). 1 Meriv. 448, 654.

LIFE INSURANCE.—See **INSURANCE**, § 7.

LIFE INSURANCE, (defined). 58 Ala. 133; 72 Mo. 159.

— (is a valid contract). 12 Mass. 115.

LIFE INTEREST, (what words in a will create). 8 Com. Dig. 482.

LIFELAND, or **LIFEHOLD**.—Land held on a lease for lives.

LIFE PEERAGE.—Letters-patent, conferring the dignity of baron for life only, do not enable the grantee to sit and vote in the House of Lords, not even with the usual writ of summons to the house.—*Wharton*.

LIFE RENT.—A rent payable to, or receivable by, a person for the term of his or her life, *e. g.* a jointure rent-charge, a life annuity issuing out of lands, and such like.—*Brown*.

LIFE RENTER.—In the Scotch law, a tenant for life without waste.—*Bell Dict.*

LIGAN.—A wreck consisting of goods sunk in the sea, but tied to a cork or buoy, in order that they may be found again. 5 Co. 106; 1 Br. & H. Com. 363. See **JETSAM**, **FLOTSAM** AND **LIGAN**.

LIGEANCE.—The old-fashioned equivalent for "allegiance" (*q. v.*) Co. Litt. 129 a.

Ligeantia est quasi legis essentia; est vinculum fidei (Co. Litt. 129): Allegiance is, as it were, the essence of law; it is the chain of faith.

Ligeantia naturalis nullis claustris coercetur, nullis metis refrænatur, nullis finibus premitur (7 Co. 10): Natural allegiance is restrained by no barriers, reined by no bounds, compressed by no limits.

LIGEAS.—In old records, a liege.

LIGHT.—

§ 1. Where the owner of a building with windows, skylights, &c., has enjoyed the access of light to it for twenty years, as of right, without interruption, he acquires the right of preventing the owners of adjoining land from building or otherwise doing anything on their land to injuriously obstruct the access of light to his windows. (See **ENJOYMENT**.) This right is a negative easement. (Shelf. R. P. Stat. 120; Gale Easm. 319; Cox Anc. L.; Latham Wind. Lights.) It is also called the "right of ancient lights," and the "right of light

and air;" but the latter name is inaccurate, as the right to air stands on a different footing. (See **AIR**.) The easement may also be acquired by express grant like any other easement, and may be (and frequently is in large cities) modified or taken away by statute.

§ 2. The right of ancient lights is not lost by the mere fact of the building on the dominant tenement having been pulled down for the purpose of erecting a new building in its place, for the easement attaches to windows in the new building occupying the same position as those of the old building, and it continues to exist while the land is vacant, if the right has not been abandoned. (Eccl. Comm. v. Kino, 14 Ch. D. 213.) The easement is also not lost where the windows in the building are enlarged or opened in a different situation. In such a case, the adjoining owner may obstruct the additional or new window, but in so doing he must not obstruct the old windows. *Tapping v. Jones*, 11 H. L. Cas. 290; *Gale Easm.* 606. See **ENCROACHMENT**, § 2.

LIGHT-HOUSE.—A high building, at the top of which lights are shown to guide ships at sea. The power of erecting and maintaining them is a branch of the prerogative of the general government. The management of light-houses is now regulated by various acts of congress. See U. S. Rev. Stat. 913, tit. 55.

LIGHTER.—A small vessel used in loading and unloading ships and steamers. There are steam-lighters and sail-lighters, the latter being the more numerous.

LIGHTERAGE.—(1) The business of transferring merchandise to and from vessels by means of lighters; (2) the compensation or price demanded for such service.

LIGHTERAGE, (defined). 1 Daly (N. Y.) 327.

LIGHTERMAN.—The master or owner of a lighter. He is liable as a common carrier.

LIGHTNING, (defined). 4 N. Y. 326, 336.

LIGIUS.—A person bound to another by a solemn tie or engagement. Now used to express the relation of a subject to his sovereign.

LIGNAGIUM.—A right of cutting fuel in woods; also, a tribute or payment due for the same.—*Jacob*.

LIGNAMINA.—Timber fit for building.—*Du Fresnoe*.

LIGULA.—A copy or transcript of a court-roll or deed.—*Cowell*.

LIGURITOR.—A flatterer; perhaps a glut-ton.—*Somner*.

LIKE, (does not necessarily mean the same in all particulars, but rather the contrary). 2 Cush. (Mass.) 145.

— (in a statute). L. R. 4 H. L. 226.

LIKE OFFENSE, (equivalent to "similar offense"). 127 Mass. 452, 455.

LIKE PROCEEDINGS, (in highway act). L. R. 5 Q. B. 87.

LIKEWISE, (synonymous with "also" and "further"). 2 Dowl. & Ry. 405.

— (in a will). 17 Ind. 68.

LIMIT—LIMITATION.—

§ 1. **Limitation of estates.**—To limit an estate is to mark out the extreme period during which it is to continue, and the clause by which this is done in a conveyance, will, &c., is called a "limitation." Thus, if I grant land to A. for life, and after his death to B. and his heirs, this is a limitation of a life estate to A., and of the remainder in fee to B. (See Wms Real Prop. 139; Prest. Est. 14. See, also, WORDS OF LIMITATION.) Hence, a limitation is opposed to a condition or defeasance, which may put an end to an estate before the time fixed for its extreme duration, though the difference is sometimes one of form only. Thus, if A. devises land to his widow for life, on condition that she does not marry again, the same result is produced as if he devised it to her during widowhood, which is a collateral limitation. (*Infra*, § 4. Fearné Cont. Rem. 10, note by Butler.) Littleton (§ 380) calls conditional and collateral limitations "conditions in law."

§ 2. **A conditional limitation** (in the generic sense of the term) is where one estate is limited to end and another to commence on the doing of some act or the happening of some event. Thus, if I grant land to A. until B. returns from Rome, and on that event to C. in fee, or if I grant land to A., provided that when B. returns from Rome it shall immediately vest in C. in fee, in either case the limitation to C. is a conditional limitation.

§ 3. But in the specific and more accurate use of the term, a conditional limitation is where an estate is limited to commence in defeasance of a preceding estate, as opposed to a contingent remainder, which awaits the regular determination of the preceding estate; conditional limitations (in this sense) derive their name from their mixed nature, "they so far partake of the nature of conditions as they abridge or defeat the estates previously limited, and they are so far limitations as, upon the contingency taking place, the estate passes to a stranger." (Butler's note to Co. Litt. 203b.) The latter of the two examples given in section 2 is a conditional limitation in this sense, the former being an instance of a collateral limitation (*infra*, § 4) or a determinable estate followed by a contingent remainder. Fearné Cont. Rem. 5, 9, 14; Sm. Ex. Int. § 148 *et seq.* See REMAINDER.

§ 4. **A collateral limitation** is one which marks the extreme duration of an estate, and at the same time indicates an uncertain event, the happening of which will put an end to it before the expiration of that period. Thus, a limitation to a woman during widowhood, is a collateral limitation, because it gives her an estate for life, but makes it determinable on her marrying again. As to the accuracy of the expression, see Butler's note (h) to Fearné 10; Smith § 36.

§ 5. At common law, no estate could be limited in expectancy on the determination of an estate in fee-simple, however limited or conditional it might be (see REVERTER; RIGHT OF ENTRY); but under the Statutes of Uses and Wills, such limitations may validly be created. A conditional or collateral limitation by way of use is sometimes called "a shifting" or "springing use" (see USE); when created by will it is called an "executory devise" (q. v.) Butler's note to Fearné 381. See EXECUTORY INTERESTS.

§ 6. **Limitation of rights of action, &c.**—Limitation, as a measure of time, is a certain period prescribed by statute within which proceedings to enforce a right, or redress a wrong, must be taken. (See Co. Litt. 114b.) This is of two kinds, namely, (1) where on the expiration of the time the right itself is barred, as in the

case of a person who has been out of possession of land for a certain number of years, although he may be ignorant of the fact that another is in possession (*Rains v. Buxton*, 14 Ch. D. 537); and (2) where on the expiration of the time the remedy is barred, but not the right. Thus, in the case of a debt which has remained unpaid and unacknowledged for six years, the creditor's right to bring an action to recover it is gone, but the debt exists for other purposes. Hence, he can exercise a right of lien to recover it, (*Shelf. R. P. Stat.* 267; *Stats.* 21 Jac. I. c. 16, § 3; 9 Geo. IV. c. 14,) but not a set-off or counter-claim, because that is in the nature of a cross-action.

§ 7. **Disabilities.**—The period allowed in each case runs from the time when the right of action accrued. (*See ACCRUAL*, § 1.) In certain cases, however, persons under disability have an extended time allowed them, calculated from the time the disability ceased, provided the whole time allowed does not exceed a certain maximum period. The disabilities recognized for this purpose are—infancy, coverture, and unsoundness of mind. As to the absence abroad of a plaintiff or defendant, *see ABSENCE*.

§ 8. **Acknowledgment—New promise.**—If the person liable to be sued gives the claimant an acknowledgment of his title, or new promise to pay the debt, this has the effect of extending the period of limitation, so that it only runs from the acknowledgment, or the last acknowledgment, if there were several. *See ACKNOWLEDGMENT*, § 3.

§ 9. **Trusts, &c.—Fraud.**—The Statutes of Limitation do not apply to trusts, except trusts created merely for the purpose of securing debts or legacies; nor to the engagements of a married woman (*Hodgson v. Williamson*, 15 Ch. D. 87. But in New York the disability of coverture is now entirely removed, (*Acker v. Acker*, 81 N. Y. 143)); nor to the crown. (*See NULLUM TEMPUS OCCURRIT REGI*.) And in the case of concealed fraud, the right of a person to bring an action to recover land or rents is deemed to have accrued at the time he discovered, or might have discovered, the fraud. The statutes do

not interfere with the equitable doctrines of laches and acquiescence (*q. v.*)

§ 10. **Limitation of proceedings.**—The time within which indictments may be found, or other proceedings commenced, for crimes and offenses, varies considerably in the different jurisdictions. In general, in all jurisdictions, the length of time is extended in some proportion to the gravity of the offense. Indictments for murder, in most, if not all, of the States, may be found at any time during the life of the criminal after the death of the victim. Proceedings for less offenses are to be commenced within periods varying from ten years to sixty days.—*Bouvier*.

LIMIT, (in public health act). L. R. 10 Q. B. 180.

LIMIT AND APPOINT, (in a deed). 5 T. R. 124, 130.

LIMITATION, (distinguished from "condition"). 4 Wheel. Am. C. L. 432; *Shep. Touch.* 117.

—— (in statute relating to estates). 24 Wend. (N. Y.) 662.

LIMITATION BY CONSTRUCTION, (what is). 10 Co. 41.

LIMITATION, CONDITIONAL, (what is). Com. L. & T. 103.

LIMITATION OF ACTIONS.—*See* LIMIT, §§ 6–10.

LIMITATION OF ASSISE.—A certain time prescribed by statute, within which a man was required to allege himself or his ancestor to have been seised of lands sued for by a writ of assise.—*Cowell*.

LIMITATION OF ESTATE.—*See* LIMIT, §§ 1–5.

LIMITATION OF LIABILITY.—

§ 1. **Companies.**—As to companies with limited liability, *see COMPANY*, § 5 *et seq.*; *CONTRIBUTORY*.

§ 2. **Shipowners.**—A shipowner is not liable at all for loss of or damage to goods on the ship in certain cases (*e. g.* when caused by fire), and, in England, is not liable for loss of life or injury to persons or things caused by or on board the ship in other cases beyond a certain amount for each ton of the ship tonnage, namely, £15 per ton in respect of loss of life or personal injury, and £8 per ton for loss or damage to goods. If the damages actually sustained exceed the amount thus arrived at, it is paid into court and distributed among the claimants in propor-

tion to their claims. The claimants are said to prove against the fund in court just as creditors prove against an insolvent estate. (*See* PROOF.) These limitations of liability only apply to cases where the loss or injury has not been caused by the shipowner's actual fault or privity. *Merch. Shipp. Amendment Act, 1862, § 54; Maud & P. Mer. Sh. 51; Wms. & B. Adm. Pr. 68.*

§ 3. **Where damage is halved.**—Where two vessels are injured by collision, and both are to blame, so that the rule as to halving the damage applies (as to which, *see* COLLISION), and one of them obtains a limitation of his liability (*supra*, § 2), no set-off is allowed between the amounts of the respective damages. Thus, suppose the ships A. and B. come in collision, and both are to blame, and the half-damage payable by A. is £14,000, and that payable by B. is £2000, then if there were no limitation of liability, A. would be liable to B. in the difference, namely, £12,000. But if ship A. obtains a judgment limiting its liability to £5000, the question arises whether ship B. should be entitled to set off the £2000 against the £14,000, and prove against the £5000 for the balance of £12,000, or whether ship B. is bound to pay the £2000 in full to ship A., and prove for the £14,000 against the £5000. It has been decided that the latter is the correct principle. *Chapman v. Royal Netherlands Co., 4 P. D. 157.*

LIMITATIONS, STATUTE OF, (history of). *South. (N. J.) 728.*

LIMITED.—Confined within fixed bounds or limits, either as to time, scope or extent.

LIMITED ADMINISTRATION.—*See* GRANT, § 5 *et seq.*

LIMITED COMPANIES.—*See* COMPANY, § 4 *et seq.*; JOINT STOCK COMPANY.

LIMITED DIVORCE.—A divorce *a mensa et thoro*. *See* DIVORCE.

LIMITED PARTNERSHIP.—*See* PARTNERSHIP.

LIMITED PARTNERSHIPS, (what are). *Ang. & A. Corp., § 42.*

LIMOGIA.—Enamel.—*Du Cange.*

LINARIUM.—A flax plat, or place where flax is grown.—*Du Cange.*

LINCOLN'S INN.—An inn of court. *See* INNS OF COURT.

LINE.—A succession of relations; a boundary; the twelfth part of an inch. *See* CONSANGUINITY; DEGREE.

LINE, (in a will). 7 *Halst. (N. J.) 311; 6 Watts (Pa.) 54.*

LINE, MARKED, (of a boundary). 14 *Wend. (N. Y.) 690; 4 Hen. & M. (Va.) 125.*

LINE OF CREDIT, (defined). 44 *Wis. 49.*

LINE OF DESCENT, (in a statute, equivalent to "line of entailment"). *South. (N. J.) 703.*

LINEA OBLIQUA.—The oblique line. More commonly termed *linea transversalis* (*q. v.*)

LINEA RECTA.—The right or direct line; a line of persons in which the one is descended mediately or immediately from the other.

Linea recta est index sui et obliqui; lex est linea recti (*Co. Litt. 158*): A right line is a test of itself, and of an oblique; law is a line of right.

Linea recta semper præfertur transversali (*Co. Litt. 10*): The right line is always preferred to the collateral. It is a rule of descent that the lineal ancestors, *in infinitum*, of any person deceased shall represent their ancestor, *i. e.* shall stand in the same place as the person himself would have done had he been living. *See* CANON, § 3; DESCENT.

LINEA TRANSVERSALIS.—The transverse or cross line; a line crossing the right or perpendicular line; a line proceeding or drawn from the right line, *on the side of it* (*à latere*), either at right angles or obliquely; the oblique or collateral line. (*Bract. 67, 68.*)—*Burrill.*

LINEAGE.—Race; progeny; family, ascending or descending.

LINEAL.—In a direct line from an ancestor.—*Webster.*

LINEAL CONSANGUINITY.—That relationship which subsists between persons each of whom is descended in a direct line from another, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line, or downwards in the direct descending line. *See* COLLATERAL CONSANGUINITY.

LINEAL DESCENT.—Descent in a right line, as where an estate descends from ancestor to heir in one line of succession, as opposed to collateral descent, which is descent in a transverse or zigzag line, namely, up through the common ancestor and then down from him. *See* COLLATERAL DESCENT; DESCENT, § 2.

LINEAL WARRANTY.—*See* COLLATERAL WARRANTY; WARRANTY.

LINEN, (in a policy of insurance). 3 Campb. 422; 5 Com. Dig. 550.

— (in a will). 8 Com. Dig. 468.

LINEN, ALL MY CLOTHES AND, (passes body linen only). 3 Bro. Ch. 311.

LINEN, THE BEST OF MY, (in a will). 2 P. Wms. 388.

LINE AND CORNERS.—In conveyancing and surveying, boundary lines and the angles they make with each other.

LIQUIDATE.—To adjust; to pay; to settle.

LIQUIDATED, (when an account is). 15 Johns. (N. Y.) 425; 2 McCord (S. C.) 127; 6 Wheel. Am. C. L. 222.

— (when a debt is). 15 Ga. 321.

LIQUIDATED BY ATTORNEY, (in a confession of judgment). 1 Watts (Pa.) 54.

LIQUIDATED DAMAGES. — See DAMAGES, § 2.

LIQUIDATED DAMAGES, (defined). 19 Cal. 677, 682; 16 Ch. D. 529.

— (in an agreement). 6 Vr. (N. J.) 155.

— (in a contract). 12 Bush (Ky.) 249.

LIQUIDATION.—

§ 1. Insolvent debtor.—Under the English Bankruptcy Act, 1869, a debtor unable to pay his debts may present a petition stating that he is insolvent, and thereupon summon a general meeting of his creditors. If the meeting passes a special resolution declaring that the affairs of the debtor are to be liquidated by arrangement, and not in bankruptcy, the creditors appoint a trustee, with or without a committee of inspection, and the property of the debtor vests in the trustee and becomes divisible among his creditors, in the same way as if he had been made bankrupt. The subsequent proceedings generally follow the same course as those in an ordinary bankruptcy (*see* BANKRUPTCY, § 5 *et seq.*), except that the close of the liquidation and the discharge of the trustee are fixed by the creditors. (Bankruptcy Act, 1869, § 125; Bankruptcy Rules, 1870, r. 252 *et seq.*) The theory of the proceeding is that the affairs of the estate are brought under the immediate control of the creditors, without the delays and expenses caused by the supervision of the court as in bankruptcy, but it cannot be said that this object is always attained. *See* COMMITTEE, § 5; COMPOSITION, § 4; DISCHARGE, § 4.

§ 2. Companies.—As to the liquidation of companies, *see* WINDING-UP.

LIQUIDATOR.—

§ 1. A person appointed to carry out the winding-up of a company. *See* WINDING-UP.

§ 2. In the case of a voluntary winding-up with or without supervision, liquidators are appointed by the company (Companies Act, 1862, § 133; Lindl. Part. 1413; Thring Comp. 187); but where a company is being wound up subject

to supervision, the court may appoint additional liquidators. Companies Act, 1862, § 150.

§ 3. In the case of a compulsory winding-up, a provisional liquidator may be appointed by the court as soon as a petition for winding-up has been presented; he resembles a receiver (*q v*) (Companies Act, 1862, § 85; Lindl. Part. 1270; Thring Comp 181.) After the winding-up order is made, official liquidators are appointed for the purpose of conducting the proceedings in the winding-up, subject to the directions of the court. Companies Act, 1862, § 92; Lindl. Part. 1271; Thring Comp. 183.

§ 4. The duties of a liquidator are to get in and realize the property of the company, to pay its debts, and to distribute the surplus (if any) among the members. The chief difference between an official liquidator and a liquidator appointed in a voluntary winding-up, is that the former cannot as a rule take any important step in the winding-up without the sanction of the court, while the latter is not so restricted; he also does various things which, in a compulsory winding-up, are done by the court, *e. g.* settling the list of contributories and making calls.

LIQUOR, (defined). 3 Harr. (N. J.) 321.

LIQUOR DEALER, (who is not). 1 Hughes (U. S.) 531.

LIQUORS, (in a statute). 20 Barb. (N. Y.) 246.

LIQUORS, STRONG AND SPIRITUOUS, (in a statute). 3 Den. (N. Y.) 43.

LIS.—A suit, action, controversy, or dispute.

LIS ALIBI PENDENS.—A suit pending elsewhere. The fact that proceedings are pending between a plaintiff and defendant in one court in respect to a given matter, is frequently a ground for preventing the plaintiff from taking proceedings in another court against the same defendant for the same object and arising out of the same cause of action. As a general rule, the plaintiff is put to his election which suit he will pursue, and the other is either dismissed or the proceedings in it are suspended until such suit is decided. *Walsh v. Bishop of Lincoln*, L. R. A. & E. 242; *The Catterina Chizzare*, 1 P. D. 368; *Westl. Pr. Int. Law*.

LIS MOTA.—Existing or anticipated litigation. The phrase is used chiefly with reference to declarations or statements made under such circumstances that they are admissible in evidence notwithstanding the rule against hearsay evidence. Thus, a pedigree drawn up by a member of a family is admissible after his death as evidence of the facts stated in it, unless it can be shown that it was drawn

up *post litem motam*.* The phrase is also used in questions of privileged communications. See CONFIDENTIAL COMMUNICATIONS; PRIVILEGE.

LIS PENDENS.—A pending suit, action, petition for winding up a company, (see *In re Barned's Banking Co*, *Ex parte* Thornton, 2 Ch. 171,) or the like. The old doctrine of *lis pendens* was, that if property was in question in a suit or action, it could not be alienated during the pendency of the suit or action, even to a purchaser or mortgagee, without notice. (Fish. Mort. 532.) But by Stat. 2 and 3 Vict. c. 11, (and the same rule obtains in most, if not all, of the States,) no *lis pendens* binds a purchaser or mortgagee without express notice thereof, unless a memorandum or notice of the pendency of the action, giving a description of the person whose estate is intended to be affected thereby, and particulars of the suit, is filed or registered. The registration of a *lis pendens* does not create an absolute incumbrance on the property, but merely gives intending purchasers or mortgagees notice of the litigation. (See an article on the subject in the Jurist, 1865 (part ii.), 383; Bull v. Hutchins, 32 Beav. 615; 9 Jur. n. s. 954.) Provision is made by Stat. 30 and 31 Vict. c. 47, for vacating a *lis pendens* if the litigation is not prosecuted *bonâ fide*, and the same may be done by statute in many of the States.

LIS PENDENS, (general doctrine as to). 4 Cow. (N. Y.) 687; 1 Wend. (N. Y.) 618.
 — (what is). 2 Atk. 174; 2 Ball & B. 170; Barn. 407; 1 Vern. 286; 2 Com. Dig. 718.
 — (what is not). 11 Wend. (N. Y.) 442; 1 Vern. 318.
 — (effect of). 1 Desaus. (S. C.) 170 n.; 3 Atk. 242, 243; 3 Swanst. 535.
 — (general rule as to notice). 13 Ves. 120.
 — (when notice). 1 Johns. (N. Y.) Ch. 576; 15 Johns. (N. Y.) 309; 1 Yeates (Pa.) 574; 7 Wheel. Am. C. L. 82; 8 Id. 303; 11 Ves. 197.
 — (when not notice). 3 Ves. 314, 317; 19 Id. 439.

LIST.—(1) A docket (*q. v.*) or calendar (*q. v.*) of causes ready for trial or argument, or of motions ready for hearing. (2) An official enumeration of taxable property is called the "tax list."

LISTERS.—Persons who make out tax lists are so called in some of the States.

LITERÆ.—Letters. A term applied in old English law to various instruments in writing, official and private.

LITERÆ DIMISSORIÆ.—Dimissory letters (*q. v.*)

LITERÆ HUMANIORES.—Greek, Latin, general philology, logic, moral philosophy, metaphysics; the name of the principal course of study in the University of Oxford.—*Wharton*.

LITERÆ MORTUÆ.—Dead letters; fulfilling words of a statute. Bacon says that, "there are in every statute certain words which are as veins, where the life and blood of the statute cometh, and where all doubts do arise, and the rest are *literæ mortuæ*, fulfilling words." Bac. Read. Uses Works iv. 189.

LITERÆ PATENTES.—Letters-patent; literally, open letters.

Literæ patentes regis non erunt vacuæ (1 Bulst. 6): The king's letters-patent shall not be void.

LITERÆ PROCURATORIÆ.—Letters procuratory; letters of procuration; letters of attorney. Bract. 40, 43.

LITERÆ RECOGNITIONIS.—A bill of lading.

LITERÆ SIGILLATÆ.—Sealed letters. The return of a sheriff to a writ.

LITERAL CONTRACT.—In the civil law, a written agreement subscribed by the contracting parties.

LITERAL PROOF.—In the civil law, written evidence.

LITERARY INSTITUTION, (in tax act). 8 Ind. 328.

LITERARY PROPERTY.—The common law right of property in a manuscript which the author possesses, both

* *Per* Lord Mansfield, Berkeley Peerage Case, 4 Camp. at p. 415; Best Ev. 633. "Prove that it [the pedigree] was made *post litem motam*, not meaning thereby a suit actually pending, but a controversy existing, and that the person making or concocting the declaration took part in the controversy. Shew me even that there was a contemplation of legal proceedings, with a

view to which the pedigree was manufactured, and I shall then hold that it comes within the rule which rejects evidence fabricated for a purpose by a man who has an interest of his own to serve." *Per* Lord Brougham, in *Monkton v. Att.-Gen.*, 2 Russ. & M. at p. 161; see, also, *Slaney v. Wade*, 1 Myl. & C. 338.

before and after publication and independently of copyright. See COPYRIGHT, § 8.

LITERARY PROPERTY, (what constitutes). 9 Am. L. Reg. 44.

LITERARY PURPOSES, (in tax act). 8 Ind. 323.

LITERATE.—One who qualifies himself for holy orders by presenting himself as a person accomplished in classical learning, &c., not as a graduate of Oxford, Cambridge, &c.—Wharton.

LITERATURA.—*Ad literaturam ponere* means to put children to school. This liberty was anciently denied to those parents who were servile tenants, without the lord's consent; the prohibition against the education of sons arose from the fear that the son, being bred to letters, might enter into holy orders, and so stop or divert the services which he might otherwise do as heir to his father. Paroch. Antiq. 401.

LITERIS OBLIGATIO.—In the Roman law the contract of *nomen*, which was constituted by writing (*scriptura*). It was of two kinds, viz.: (1) *A re in personam*, when a transaction was transferred from the day-book (*adversaria*) into the ledger (*codex*) in the form of a debt under the name or heading of the purchaser or debtor (*nomen*), and (2) *a person in personam*, where a debt already standing under one *nomen* or heading was transferred in the usual course of *Novatio* from that *nomen* to another and substituted *nomen*. By reason of this transferring, these obligations were called "*nomina transcriptitia*," no money was, in fact, paid to constitute the contract; if ever money was paid, then the *nomen* was *arcadium* (i. e. a real contract, *re contractus*) and not a *nomen proprium*.—Brown.

LITHOGRAPH, (defined). 7 Otto (U. S.) 363.

LITIGANT.—One engaged in a law suit.

LITIGATION.—A judicial contest; a law suit.

LITIGIOUS.—

§ 1. In American law, (1) that which is the subject of litigation; (2) an overfondness for instituting law suits, even unfounded ones, or of defending well-founded ones.

§ 2. In ecclesiastical law.—A church or benefice is said to be litigious when two patrons present to it by several titles, because then the bishop knows not under which presentation to admit, even if they both present the same clerk. Phillim. Ecc. L. 445; Co. Litt. 243a. See JUS PATRONATUS; QUARE IMPEDIT.

LITIGIOUS RIGHT.—In the civil law, a right which cannot be enjoyed without bringing or defending a law suit.

LITIS ÆSTIMATIO.—The measure of damages.

LITIS CONTESTATIO.—See CONTESTATION OF SUIT.

LITIS DOMINIUM.—See DOMINUS LITIS.

Litis nomen omnem actionem significat, sive in rem, sive in personam sit (Co. Litt. 292): A law suit signifies every action, whether it be *in rem* or *in personam*.

LITISPENDENCE.—An obsolete term for the time during which a law suit is going on. See LIS PENDENS.

LITRE.—A French measure of capacity equal to one tenth part of a cubic mètre, or 61.023 cubic inches.

LITTLETON.—Thomas Littleton seems to have been born about the beginning of the fifteenth century; was called to the bar at the Inner Temple, made serjeant-at-law 1453, judge of the Common Pleas 1466, knighted 1475, and died 23d August, 1481. He wrote the celebrated "Treatise on Tenures," still quoted as an authority on the law of real property, and made valuable by the equally celebrated Commentary of Sir E. Coke. (Foss Biog. Dict.; Coke's Preface to the First Institute.) There is also a commentary on it by an unknown writer, which is pronounced by Mr. Hargrave to be "a very methodical and instructive work." Cary Comm. on Littleton vii.

LITTORAL.—Belonging or appertaining to the seashore, or the shore of the great lakes. A "littoral" proprietor is the same as a "riparian" proprietor. See RIPARIAN.

LITUS MARIS.—The sea-shore. "It is certain that that which the sea overflows, either at high spring tides or at extraordinary tides, comes not, as to this purpose, under the denomination of *litus maris*, and consequently the king's title is not of that large extent, but only to land that is usually overflowed at ordinary tides. That, therefore, I call the *shore* that is between the common high-water and low-water mark, and no more." Hale de Jur. Mar. c. 4.

LIVE, (in a will). 2 Whart. (Pa.) 283; 1 Chit. Gen. Pr. 153.

LIVE AND DEAD STOCK, (in a will). 3 Ves. 313.

LIVE ANIMALS, (in act of congress). 7 Blatchf. (U. S.) 235.

LIVE STOCK, (does not embrace live fowls). 5 Blatchf. (U. S.) 520.

LIVELIHOOD, (in a will). 3 Atk. 399.

LIVELIHOOD OF THE WIFE, (in a will), 1 Yeates (Pa.) 439.

LIVELIHOOD, SEEKING A, (defined). 2 Moo. & Sc. 116.

— (in a statute). 10 Barn. & C. 542; 5 Bing. 315; 1 Dowl. P. C. 399, 583; 5 Dowl. & Ry. 626; 13 East 161; 16 *Id.* 147, 5 Esp. 19; 1 Marsh. 269; 2 Moo. & P. 577; 2 Taunt. 196; 5 *Id.* 648.

LIVELODE.—Maintenance; support.

LIVERY.—Formerly when an infant heir of land had been in ward to the king by reason of a tenure *in capite ut de coronâ*, he was obliged, on attaining twenty-one, to sue livery, *i. e.* to obtain delivery of the possession of the land, for which (in the case of a general livery) he paid half a year's profit of the land. Livery was either general, *i. e.* in the ordinary form, which had several disadvantages, or special, *i. e.* granted by the king as a matter of grace, by which those disadvantages were avoided and for which the heir had to pay more. Co. Litt. 77a. As to the mode by which a tenant *in capite ut de honore* obtained his lands, see OUSTERLEMAIN. See, also, GUARDIAN; KNIGHT'S SERVICE; IN CAPITE.

LIVERY-MAN.—A member of some company in the city of London; also, called a "freeman."

LIVERY OF SEISIN.—

§ 1. A public solemnity, or "overt ceremony," which was formerly necessary to convey an immediate estate of freehold in lands or tenements; *i. e.* an estate of freehold in possession, or an estate of freehold only kept out of possession by a chattel interest (*i. e.* a term of years) preceding it. (Co. Litt. 48a; Shep. Touch. 209 *et seq.*; Burt. Comp. Eq. 7.) Thus, if before the Statute of Uses a tenant in fee wished to convey his estate to another, he could only do so by a feoffment, which operates by livery of seisin. (Co. Litt. 48b; 4 Jarm. & B. 40; Wms. Seis. 100. See FEOFFMENT.) At the present day simpler means of conveyance are usually available, and livery of seisin is practically obsolete.

§ 2. Livery of seisin is a transfer of the feudal possession of land, and it is, therefore, essential that it should be made either in the absence or with the assent of all persons having a right to the possession as against the feoffor, such as lessees for years.

§ 3. Livery in deed.—There are two kinds of livery of seisin, viz., a livery in deed and a livery in law. A livery in deed is where the feoffor is on the land to be conveyed, and verbally requests or invites the feoffee to enter, or formally hands to him any object, such as the ring or hasp of the door of the house, or a branch or twig of a tree, or a turf of the land, and declares that he delivers it to him by way of seisin of all the lands and tenements contained in the deed of feoffment. Co. Litt. 48a.

§ 4. Livery in law, or within the view.—"A livery in law [or livery within the view] is when the feoffor saith to the feoffee, being in view of the house or land, 'I give you yonder land to you and your heires, and go enter into the same, and take possession thereof accordingly,' and the feoffee doth accordingly in

the life of the feoffor enter, this is a good feoffment." *Id.* 48b. See HEREDITAMENT, § 2.

LIVERY OF SEISIN, (defined). 3 Halst. (N. J.) 108.

— (what is not). Cro. Jac. 80.

— (not necessary to perfect title by letters-patent. 8 Cranch (U. S.) 247.

LIVERY-OFFICE.—An office appointed for the delivery of lands.

LIVES, (equivalent to "subsisting," or "obtaining a livelihood"). 47 How. (N. Y.) Pr. 446.

— (in a statute). 16 Wend. (N. Y.) 221.

— (lease made to two during their). 5 Co. 9; 1 Dyer 46.

LIVING.—See BENEFICE. As to living memory, see MEMORY.

LIVING, (in a statute). 13 Mass. 343; 111 *Id.* 159.

— (in a devise). 4 Munf. (Va.) 328; Colles P. C. 163; Cro. Jac. 649.

LIVING AT HIS DEATH, (in a will). 1 Whart. (Pa.) 221.

LIVING IN ADULTERY, (who is guilty of). 14 Ala. 608.

LIVING PERSONS, (in the code). 22 N. Y. 352.

LIVING SON, (posthumous son is). 1 P. Wms. 486.

LLOYD'S BONDS.—Instruments of modern origin, in England, being the invention of the eminent counsel whose name they bear. They are intended to assist railway companies in carrying out their schemes, by indirectly enlarging their borrowing powers, which are limited by the acts creating them, and by the Stats. 7 and 8 Vict. c. 85, § 19, and 8 and 9 Vict. c. 16. A Lloyd's bond is merely an admission under seal of a debt due from some railway company to the party in whose favor it is executed, with a covenant to pay the debt with interest. ("An account stated under seal, with a covenant to pay." *Per* Blackburn, J., *Chambers v. Manchester and Milford Railway Co.*, 33 L. J. Q. B., N. S., 208; 5 Best & S. 588.) The obligee is thus enabled to go into the market and obtain cash upon the faith of these instruments. (Tarrant on Lloyd's Bonds 7, 8.) They are generally used (and can only legally be used) for paying contractors and others who have done work or supplied materials, &c., for the company, and cannot be given for a mere loan of money to the company. See *Hodg. Railw.* 129 *et seq.*

LOADED ARMS, (what are not). 1 Car. & K. 530.

— (in a statute). 5 Car. & P. 159, 160.

LOADED WAGON, (what is not). 5 Conn. 465.

LOADED WITH MANURE, (in a statute). 2 Chit. 547, 549.

LOAD-LINE.—The depth to which a ship is loaded so as to sink in salt water. Section 6 of the English Merchant Shipping Act of 1875 (38 and 39 Vict. ch. 88) prescribes that every

owner of a British ship, before entering his ship or wards from any port in the United Kingdom, shall mark, in white or yellow on a dark ground, a circular disk, twelve inches in diameter, with a horizontal line, eighteen inches in length, drawn through its center, and the center of this disk is to indicate the maximum load-line in salt water to which the owner intends to load the ship for that voyage. Mozely & W.

LOADMANAGE.—The pay to a pilot for conducting a ship from one place to another. —*Cowell.*

LOAF SUGAR, (in revenue act). 1 Sumn. (U. S.) 159, 161.

LOAN.—A bailment without reward; anything lent or given to another on condition of return or repayment. A sum of money confided to another. If it be effected by the government, it is a *public loan*.

LOAN, (defined). 29 N. Y. 146, 167. (what constitutes). 2 Harr. (N. J.) 207; 6 East 186; 2 Nev. & M. 608.

LOAN OR USE OF MONEY, (in a statute). 13 Serg. & R. (Pa.) 221; 2 Watts (Pa.) 264.

LOAN CAPITAL.—In England, public and joint stock companies may create a loan capital, *i. e.* may borrow money on mortgage or bond or debenture stock; *e. g.* railway companies under the Railway Companies Act, 1867, (30 and 31 Vict. c. 127, § 21). Such loan capital takes precedence usually of all other the general debts (but not liens) of the company. —*Brown.*

LOAN, GRATUITOUS.—

§ 1. A class of bailment which is called *commodatum* in the Roman law, and is denominated by Sir William Jones, a *loan for use* (*prêt à usage*), to distinguish it from *mutuum*, a loan for consumption. It is the gratuitous lending of an article to the borrower for his own use.

§ 2. **What constitutes.**—Several things are essential to constitute this contract. (1) There must be a loan of either goods or chattels, in contradistinction to a sale or a deposit of a thing with another for the sole benefit or purposes of the owner. (2) It must be lent gratuitously. (3) It must be lent for the use of the borrower, which must be the principal object, and not merely accessorial. (4) The property must be lent to be specifically returned to the lender at the determination of the bailment; and in this respect it differs from a *mutuum*, or loan for consumption, where the thing bor-

rowed, such as corn, wine, oil, or money, is to be returned in kind.

§ 3. **The borrower** has the right to use the thing during the time and for the purpose agreed upon by the parties. The loan is to be considered as strictly personal, unless from other circumstances a different intention may fairly be presumed. The borrower must take proper care of the thing borrowed, use it according to the lender's intention, restore it at the proper time, and in a proper condition.

§ 4. **The lender** must suffer the borrower to use and enjoy the thing lent during the time of the loan, according to the original intention, without any molestation or impediment, under the peril of damages. He must re-imburse the borrower the extraordinary expenses to which he has been put for the preservation of the thing lent. He is bound to give notice to the borrower of the defects of the thing lent; and if he do not, but conceal them, and an injury occurs to the borrower thereby, the lender is responsible. Where the thing has been lost by the borrower, and, after he has paid the value thereof, is restored to the lender, the latter must return either the price paid or the thing; for, by such payment of the loss, the property is effectively transferred to the borrower.

§ 5. Mr. Justice Story thus concludes his observations on gratuitous loans—a subject of daily occurrence in the actual business of human life: "It has, however," says he, "furnished very little occasion for the interposition of judicial tribunals, for reasons equally honorable to the parties and to the liberal spirit of polished society. The generous confidence thus bestowed is rarely abused; and if a loss or injury unintentionally occurs, an indemnity is either promptly offered by the borrower, or compensation is promptly waived by the lender." Story Bailm c. iv.

LOAN-NOTES.—See LLOYD'S BONDS.

LOAN SOCIETIES.—Institutions established in England for the purpose of advancing money on loan to the industrious classes, and receiving back payment for the same by instalments, with interest. See FRIENDLY SOCIETIES.

LOCAL.—Relating to place; belonging to or confined within a particular place.

LOCAL, (general meaning of). 1 Lans. (N. Y.) 248, 256.

— (equivalent to "special"). 3 Tex. App. 363.

— (in State constitution). 43 N. Y. 10; 68 *Id.* 381; 1 Thomp. & C. (N. Y.) 280, 284.

LOCAL ACTIONS.—Those referring to some particular locality, as actions for trespasses on land, in which the venue must have been laid in the county where the cause of action arose. Real actions and the mixed action of ejectment are local; but personal actions are for the most part transitory, *i. e.* their cause of action may be supposed to take place anywhere, but when they are brought for anything in relation to realty, they are then local. See 3 Steph. Com. (7 edit.) 366; 2 Chit. Archb. Pr. (12 edit.) 1349.

LOCAL ACTION, (what is). 6 Mass. 381; 7 *Id.* 353; 2 Johns. (N. Y.) Cas. 381; 23 Wend. (N. Y.) 484; 2 W. Bl. 1070.

— (what is not). 1 Halst. (N. J.) 298; 2 Johns. (N. Y.) Cas. 335.

LOCAL ALLEGIANCE.—Such as is due from an alien or stranger born, so long as he continues within the country. It ceases the instant such stranger transfers himself from this country to another. But if an alien seeking the protection of this government, and having a family and effects here, should, during a war with his native country, go thither, and there adhere to our enemies for purposes of hostility, he may be dealt with as a traitor. See ALIEN.

LOCAL BOARDS OF HEALTH.—See BOARD OF HEALTH.

LOCAL COURTS.—Tribunals of a limited and special jurisdiction, as the several county courts throughout the country. See, *further*, BOROUGH COURTS, and INFERIOR COURTS.

LOCAL GOVERNMENT ACTS.—Various English statutes from 21 and 22 Vict. c. 98, to 26 and 27 Vict. c. 17, the first of which gave certain districts the power of adopting and carrying into effect the Public Health Act, 1848, (as amended by the L. G. A., 1858,) without the necessity of a provisional order of the (then) General Board of Health confirmed by act of parliament. The acts deal with various sub-

jects, including sanitary matters; but have now been repealed and their provisions incorporated in the Public Health Act, 9. act, however, distinguishes its "sanitary provisions" from its "local government and lodgings," the latter being those which deal with the powers of local authorities in respect to the construction, maintenance, repair, and regulation of the highways, streets, and buildings within their respective districts. See PROVISIONAL ORDER; SANITARY AUTHORITIES.

LOCAL GOVERNMENT BOARD.—

A board established by the Stat. 34 and 35 Vict. c. 70, for the purpose of concentrating in one department of the government the supervision of the laws relating to the public health, the relief of the poor, and local government. The board may be said to have the control of the various local authorities entrusted with the execution of these laws in their respective districts, (*see* POOR; SANITARY AUTHORITIES,) and its sanction is necessary for many purposes, *e. g.* the borrowing of money by sanitary authorities under the Public Health Acts. The board has the same powers and duties as those formerly vested in the Poor Law Board, the General Board of Health, and some other authorities. 3 Steph. Com. 49, 176.

LOCAL IMPROVEMENT.—An improvement made in a particular locality, by which the real property adjoining or near such locality is specifically benefited. (*Rogers v. City of St. Paul*, 22 Minn. 494.) The phrase is most commonly used to designate a class of street improvements in cities, such as grading, paving, &c.

LOCAL IMPROVEMENT, (in amendment to constitution). 22 Minn. 494.

LOCAL LAWS, (what are not). 13 Vr. (N. J.) 195, 357, 409.

LOCAL LEGISLATION, (in State constitution). 5 Lans. (N. Y.) 115.

LOCAL OPTION LAWS.—Laws in force in some of the States, giving to each county or municipality, the power to regulate or prohibit the sale of intoxicating liquors.

LOCAL OR LOCATED MINISTER, (defined). 5 Binn. (Pa.) 560.

LOCAL STATUTE.—Such a statute as has for its object the interest of some particular locality, as the formation of a road, the alteration of the course of a river, the formation of a public market in a particular district, &c.

LOCAL TAXES.—Those assessments which are limited to certain districts, as poor-rates, parochial taxes, country rates, municipal taxes, &c.

Of a BRIL VENUE.—A venue which is made from aid in a particular county. *See* **VENUE**.

LOCATIONS; VENUE.

LOCATARIUS.—A depositee.

LOCATE.—To ascertain the place in which something belongs, as to locate the calls in a deed or survey; (2) to determine the place to which something shall be assigned; to fix or establish the situation of anything, as to locate a railroad.—*Abbott*.

LOCATE, (as synonymous with "erect," and "put up"). 6 How. (N. Y.) Pr. 37, 39, 40.
— (in a contract). 82 Ill. 550.

LOCATE AND SURVEY, (power to, gives power to sell). 2 Bibb (Ky.) 69.

LOCATE ANEW, (in highway laws). 117 Mass. 416.

LOCATED, (in a statute). 103 Mass. 263.

LOCATIO.—Hire; a letting-out.

LOCATIO-CONDUCTIO, or **HIRING.**—A bailment for a reward or compensation. *See* **HIRING**.

LOCATIO CUSTODIÆ.—The receiving of goods on deposit for reward.

LOCATIO MERCIUM VEHENDARUM.—A contract for the carriage of goods for hire.

LOCATIO OPERIS.—The hiring of labor and services.

LOCATIO OPERIS FACIENDI.—The hiring of labor and services.

LOCATIO OPERIS MERCIUM VEHENDARUM.—A hiring of labor in the carrying of goods. *See* **BAILEE**; **HIRING**.

LOCATIO REI.—The hiring of a thing.

LOCATION.—

§ 1. **In American law.**—(1) The site, or place where a thing may be found; (2) the ascertainment and designation of boundaries. *See* **LOCATE**.

§ 2. **In the civil and Scotch law**, a contract for the temporary use of a chattel, or the service of a person, for an ascertained hire.

LOCATION OF THE LOT, (in a statute). 60 Me. 540.

LOCATIVE CALLS.—Calls (*q. v.* § 1) in a deed, patent, survey, &c., which refer to physical objects by which the boundaries of the land in question may be positively and readily ascertained.

LOCATIVE CALLS, (what are). 2 Wheat. (U. S.) 211.

— (distinguished from "general" or "descriptive calls"). 2 Wheel. Am. C. L. 482.
— (the straight line as the means of ascertaining). 11 Wheat. (U. S.) 216.

LOCATOR.—(1) A letter of a thing, or services for hire; (2) one who locates land. *See* **LOCATE**.

LOCKE KING'S ACT.—This statute, so called from the member of parliament by whom the bill was introduced, is the Stat. 17 and 18 Vict. c. 113. It provides that when any person dies entitled to any estate or interest in land which is charged at the time of his death with the payment of money by way of mortgage, and he does not signify a contrary intention, his heir or devisee shall not be entitled to have the mortgage debt discharged out of his personal estate (as was the old rule in England), but shall take the land subject to the debt. (Wms. Real Prop. 438; Fish. Mort. 681, 696.) The rule has been extended to equitable charges and liens for unpaid purchase-money, and has been made applicable to leaseholds. Stats. 30 and 31 Vict. c. 69; 40 and 41 *Id.* 34. *See* **EXONERATION**; **MARSHALLING**.

LOCKMAN.—An officer in the Isle of Man, to execute the orders of the governor, much like our under-sheriff.—*Wharton*.

LOCO PARENTIS.—*See* **IN LOCO PARENTIS**.

LOCOCESSION.—The act of giving place.

LOCULUS.—In old records, a coffin; a purse.

LOCUM TENENS.—Holding the place. A deputy, lieutenant, or representative.

LOCUS CONTRACTUS.—*See* **LEX LOCI CONTRACTUS**.

LOCUS DELICTI.—The place of commission of the tort, offense or injury in question.

LOCUS IN QUO.—The place in which the cause of action arose, or where anything is alleged to have been done, in pleadings, is so called. (1 Salk. 94.) The phrase is almost peculiar to actions of trespass *quare clausum fregit*.

LOCUS PARTITUS.—A division made between two towns or counties, to make trial where the land or place in question lies. *Fleta* l. 4, c. xv.

LOCUS PENITENTIÆ.—A place or chance of repentance. A power of drawing back from a bargain before any act has been done to confirm it in law.—*Bell Dict.*

LOCUS PENITENTIÆ, (when there is). 14 Blatchf. (U. S.) 364.

Locus pro solutione redditus aut pecuniæ secundum conditionem dimissionis aut obligationis est stricte observandus (4 Co. 73): The place for the payment of rent or money, according to the condition of a lease or bond, is to be strictly observed.

LOCUS REGIT ACTUM.—In private international law, the rule that when a legal transaction complies with the formalities required by the law of the country where it is done, it is also valid in the country where it is to be given effect to, although by the law of that country other formalities are required. (8 Sav. Syst. § 381; Westl. Pr. Int. Law 159.) There are many exceptions to the rule, the principal being with reference to land and other immovables. The will of a British subject is valid in England, so far as regards personal estate, if made according to the forms required either by the law of the place where it was made, or by the law of his domicile. Stat. 24 and 25 Vict. c. 114. See **DOMICILE**; **LEX LOCI**.

LOCUS REI SITÆ.—See **LEX REI SITÆ**.

LOCUS SIGILLI.—The place of the seal; usually abbreviated L. S.

LOCUS STANDI.—The right of a person to be heard on a judicial or quasi-judicial proceeding. The phrase is chiefly used in parliamentary practice with reference to the question whether a person who objects to a private bill has the right to appear by counsel and summon witnesses to support his objection before the select committee. May Parl. Pr. 761. See **REFEREE**.

LODE-MANAGE, or LODE-MERGE.—The hire of a pilot for conducting a vessel from one place to another.—*Cowell*. See **LOADMANAGE**.

LODGED IN MY HANDS, (in a receipt). 3 Pa. 224.

LODGER—LODGINGS.

§ 1. A lodger is a person who occupies rooms in a house of which the general possession remains in the landlord, as shown by the fact that he retains control over the street or outer door. If, therefore, a house is divided into sets of rooms, each of which has an outer door opening on to a common staircase, while the entrance to that staircase either has no street-door, or has a door under the control of a porter acting as the servant of the collective tenants, then each set of rooms is not a lodging, but a separate hereditament, and each tenant has a ratable occupation. Castle on the Rating 83; L. R. 7 Q. B. 96. See **RATABLE**.

§ 2. **Exemption from distress.**—Goods belonging to a lodger are exempt from distress for rent owing by the lodger's landlord to the superior landlord. To entitle himself to this exemption, the lodger must serve on the superior landlord a declaration, with an inventory of the goods distrained on, stating if any rent is due to

his immediate landlord, and that the goods are his, and must tender the amount to the superior landlord. Stat. 34 and 35 Vict. c. 79.

§ 3. **Franchise.**—In every parliamentary borough, a person who has occupied lodgings, being of the yearly value of £10, for twelve months preceeding the last day of July in any year, is entitled to be registered as a voter at parliamentary elections. Stats. 30 and 31 Vict. c. 102; 41 and 42 Vict. c. 26, § 5 *et. seq.*

§ 4. **Common lodging houses.**—The English acts relating to the public health contain provisions for the registration, inspection, and regulation of common lodging houses. (Public Health Act, 1875, § 76 *et. seq.*) The acts relating to the metropolis are the Common Lodging Houses Acts, 1851, 1853, and the Sanitary Acts, 1866–1874.

LODGER, (defined). L. R. 4 C. P. 525.

— (in lodgers' goods protection act). 3 C. P. D. 26.

— (rights of). 7 Car. & P. 26.

LOGATING.—An unlawful game mentioned in Stat. 33 Hen. VIII. c. 9.

LOG-BOOK, or LOG.—A sort of journal kept by the officers of a ship, containing a minute account of the ship's course and of all memorable events occurring during the voyage. See U. S. Rev. Stat. § 4290.

LOGIA.—A small house, lodge, or cottage. Mon. Ang. tom. 1, p. 400.

LOGIC.—GREEK: *λογος*, reason.

The science of the operations of the understanding which are subservient to the estimation of evidence; both the process itself of proceeding from known truths to unknown, and all other intellectual operations, in so far as auxiliary to this. It includes, therefore, the operation of naming; for language is an instrument of thought, as well as a means of communicating our thoughts. It includes, also, definition and classification. For the use of these operations (putting all other minds than one's own out of consideration) is to serve not only for keeping our evidence and the conclusions from them permanent and readily accessible in the memory, but for so marshaling the facts which we may at any time be engaged in investigating, as to enable us to perceive more clearly what evidence there is, and to judge, with fewer chances of error, whether it be sufficient. These therefore, are operations specially instrumental to the estimation of evidence, and

as such, are within the province of logic.—
1 *Mill Log.*; *Art. Log. Comp.*; *Wooley*
Introd.; *Whately Log.*

LOGIUM.—In old records, a lodge, hovel,
or outhouse.

LOGOMACHY.—A contest of words.

LOGS OR TIMBER, (in a statute). 3 *Wis. L.*
N. 286.

LOLLARDS.—A body of primitive Wes-
leyans, who assumed importance about the time
of John Wycliffe (1360), and were very success-
ful in disseminating evangelical truth; but being
implicated (apparently against their will) in the
insurrection of the Villeins in 1381, the Stat. *De*
Hæretico Comburendo (2 Hen. IV. c. 15) was
passed against them, for their suppression. How-
ever, they were not suppressed, and their rep-
resentatives survive to the present day under
various names and disguises.—*Brown.*

LONDON, (in public worship act). 3 *Q. B.*
D. 46.

LONG, (in a lease). 8 *East* 165.

— (in a statute). 9 *Ves.* 127.

LONG ACCOUNT, (in statute authorizing refer-
ences). 13 *How.* (N. Y.) Pr. 437; 32 *Id.* 164;
2 *Abb.* (N. Y.) Pr. n. s. 266; 9 *Abb.* (N. Y.)
Pr. 436; 19 *Id.* 286.

LONG PARLIAMENT.—The name
usually given to the parliament which met in
November, 1640, under Charles I., and was dis-
solved by Cromwell on the 10th of April, 1653.
The name "long parliament" is, however, also
given to the parliament which met in 1661, after
the restoration of the monarchy, and was dis-
solved on the 30th of December, 1678. This
latter parliament is sometimes called, by way of
distinction, the long parliament of Charles II.
Mozley & W.

Longa possessio est pacis jus (Branch
Pr.): Long possession is the law of peace.

**Longa possessio parit jus possi-
dendi, et tollit actionem vero domino**
(Co. Litt. 110b): Long possession produces the
right of possession, and takes away from the true
owner his action.

LONGER, (in a will). 1 *Burr.* 38.

LONGEST, (in a will). 1 *Harr. & M.* (Md.)
148.

LONGEST LIVER, (in a will). 1 *Root* (Conn.)
78.

**Longum tempus, et longus usus qui
excedit memoria hominum, sufficit
pro jure** (Co. Litt. 115a): Long time and
long use, exceeding the memory of men, suffices
for right.

LOPWOOD.—A right in the inhabitants
of a parish within a manor, in England, to lop
for fuel, at certain periods of the year, the
branches of trees growing upon the waste lands
of the manor. The true nature of the right is

not quite clear, and it seems that it can only be
created by crown grant or act of parliament.
Willingale v. Maitland, L. R. 3 Eq. 103; *Chil-
ton v. Corporation of London*, 7 Ch. D. 735.
See **PRESCRIPTION**; **PROFIT A PRENDER**.

LOQUELA.—An imparlance; a declara-
tion.

LOQUELA SINE DIE.—A respite to
an indefinite time.

**Loquendum ut vulgus, sentiendum
ut docti** (7 Co. 11): Speak as the ordinary
people, think as the learned.

LORD—LORDSHIP.

§ 1. In the English law of real property, a
lord is a person of whom land is held by an-
other as his tenant. The relation between the
lord and the tenant is called "tenure" (*q. v.*),
and the right or interest which the lord has in
the services of his tenant is called a "lordship"
or "seignory" (*q. v.*) *Wms. Seis.* 9.

§ 2. If before the Statute of *Quia Emptores*
(*q. v.*), A. conveyed land to B. to hold of him-
self (A.), and B. conveyed it to C. to hold of
himself (B.), A. would be called "lord param-
ount," B. "mesne lord" or "mesne," and C.
"tenant paravail." (*See* **MESNE**.) The Statute
of *Quia Emptores* having abolished subinfeuda-
tion, no person can now create a lordship. (*See*
SUBINFEUDATION.) The only lords of any im-
portance at the present day are lords of manors.
(*See* **MANOR**.) But the crown is sovereign lord,
or lord paramount, of all the land in England
(Co. Litt. 1a, 65a), and in that character some-
times becomes entitled to land by escheat (*q. v.*)
See **HOUSE OF LORDS**.

LORD ADVOCATE.—The chief public
prosecutor of Scotland.

LORD CHAMBERLAIN.—*See* **CHAM-
BERLAIN**.

LORD CHANCELLOR.—*See* **CHAN-
CELLOR**, § 3.

LORD CHIEF BARON.—The chief
judge of the Court of Exchequer, prior to the
judicature acts. *See* **BARON**, § 2.

LORD CHIEF JUSTICE.—*See* **JUS-
TICE**.

LORD HIGH ADMIRAL.—*See* **AD-
MIRAL**, § 1.

LORD HIGH STEWARD.

§ 1. In England, when a person is impeached,
or when a peer is tried on indictment for trea-
son or felony before the House of Lords, one of
the lords is appointed lord high steward, and
acts as speaker *pro tempore*. *See* **CERTIORARI**,
§ 4; **IMPEACHMENT**.

§ 2. If a peer is indicted for treason or felony
while the House of Lords is not sitting, the in-
dictment is removed into the Court of the Lord
High Steward, which is a court instituted by

commission from the crown, summoning all the peers of parliament; in it the lord high steward is sole judge on points of law, and the peers summoned are triers and judges of fact only. (Cox Inst. 473; 4 Steph. Com. 302.) This court is not to be confounded with that of the Lord Steward of the King's Household, practically abolished by Stat. 9 Geo. IV. c. 31; 4 Steph. Com. 325.

LORD HIGH TREASURER.—An officer formerly existing in England, who had the charge of the royal revenues and customs duties, and of leasing the crown lands. His functions are now vested in the lords commissioners of the treasury. Mozley & W.

LORD IN GROSS.—He who is lord, not by reason of any manor, but as the king in respect of his crown, &c. *Very lord*, is he who is immediate lord to his tenant; and *very tenant*, he who holds immediately of that lord. So that, where there is lord paramount, lord mesne, and tenant, the lord paramount is not very lord to the tenant.—*Wharton*.

LORD KEEPER, or keeper of the great seal, was originally another name for the lord chancellor. (See **CHANCELLOR**, § 3.) After Henry II.'s reign they were sometimes divided, but now there cannot be a lord chancellor and lord keeper at the same time, for, by the Stat. 5 Eliz. c. 18, they are declared to be the same office. Com. Dig. Chancery B. 1.

LORD LIEUTENANT.—The office of "lieutenants of counties" was created about the reign of Henry VIII., or one of his children, (some say in that of Edward VI.,) for the purpose of having a representative of the crown in each county, to keep it in military order. For this purpose they have the power of raising militia. Formerly, they had the command of the militia and other auxiliary forces, and appointed their officers, (2 Steph. Com. 585; 1 Broom & H. Com. 496,) but by the Stat. 34 and 35 Vict. c. 86, the jurisdiction of lieutenants of counties in these respects has been transferred to the crown. They have, however, the power of recommending persons for certain commissions, to which recommendation the crown is bound to give effect.

LORD MAYOR'S COURT.—See **MAYOR'S COURT OF LONDON**.

LORD OF A MANOR.—The grantee or owner of a manor.

LORD PRIVY SEAL.—This officer, before the 30 Hen. VIII., was generally an ecclesiastic; the office has since been usually conferred on temporal peers, above the degree of barons. He is appointed by letters-patent. The lord privy seal, receiving a warrant from the signet office, issues the privy seal, which is an authority to the lord chancellor to pass the great seal, where the nature of the grant requires it. But the privy seals for money begin in the treasury, whence the first warrant issues, countersigned by the lord treasurer. On the

lord privy seal are two attendant clerks, who have two deputies to act for them. He is a member of the cabinet council.—*Encycl. Lond.*

LORD WARDEN OF CINQUE PORTS.—See **CINQUE PORTS**, § 1.

LORD'S DAY.—*Dies Dominica*; Sunday.

LORDS APPELLANTS.—Five peers who for a time superseded Richard II. in his government; and whom, after a brief control of the government, he in turn superseded in 1397, and put the survivors of them to death. Richard II.'s eighteen commissioners (twelve peers and six commoners) took their place, as an embryo privy council acting with full powers, during the parliamentary recess.—*Brown*.

LORDS JUSTICES OF APPEAL.—

§ 1. These are at present of three classes, namely: (1) The lords justices of appeal in Chancery, who were in office when the Judicature Acts came into operation, and who by those acts were made members of the new Court of Appeal (*q. v.*); (2) the lords justices appointed under the Judicature Act, 1875; and (3) those appointed under the Appellate Jurisdiction Act, 1876.

§ 2. The two lords justices of the Court of Appeal in Chancery were appointed under the Stat. 14 and 15 Vict. c. 83, to assist the lord chancellor in disposing of appeals from the master of the rolls, the vice chancellors, and the Bankruptcy Court, and in disposing of business in lunacy. Haynes Eq. 32. See **COURT OF APPEAL IN CHANCERY**.

§ 3. The lords justices of appeal under the Judicature Act are the ordinary members of the Court of Appeal. Three of them (including the successors to the L. J.J. of A. in Chancery) are appointed under the Judicature Act, 1875, § 4, and three under the Appellate Jurisdiction Act, 1876, § 15. The latter L. J.J. differ from the three former in being under the obligation to go circuit, and to act on commissions of assize. See **COURT OF APPEAL**; **HOUSE OF LORDS**.

LORDS MARCHERS.—Those noblemen who lived on the marches of Wales or Scotland; who in times past had their laws and power of life and death, like petty kings. Abolished by 27 Hen. VIII. c. 26, and 6 Edw. VI. c. 10.

LORDS OF APPEAL.—

§ 1. Those members of the House of Lords of whom at least three must be present for the hearing and determination of appeals. They are the lord chancellor, the lords of appeal in ordinary, (*infra*, § 2,) and such peers of parliament as hold, or have held, high judicial offices—such as ex-chancellors and judges of the superior courts in Great Britain and Ireland. Appellate Jurisdiction Act, 1876, §§ 5, 25.

§ 2. **In ordinary.**—Lords of Appeal in ordinary are persons appointed by the queen for the purpose of aiding the House of Lords in the hearing and determination of appeals. They

must have held some high judicial office for two years, or have been practicing barristers or advocates for at least fifteen years. They are barons for life, and are entitled to sit and vote in the House of Lords during their tenure of office. *Id.* § 6.

LORDS OF ERECTION.—On the reformation in Scotland, the king, as proprietor of benefices, formerly held by abbots and priors, gave them out in temporal lordships to favorites, who were termed "lords of erection."—*Wharton.*

LORDS OF PARLIAMENT.—Those who have seats in the House of Lords. During bankruptcy, peers are disqualified from sitting or voting in the House of Lords. 34 and 35 Vict. c. 50.—*Wharton.*

LORDS OF REGALTY.—Persons to whom rights of civil and criminal jurisdiction were given by the crown.—*Bell Dict.*

LORDS ORDAINERS.—Lords appointed in 1312, in reign of Edw. II., for the control of the sovereign and the court party, and for the general reform and better government of the country.—*Brown.*

LORDS SPIRITUAL.—The archbishops and bishops who have seats in the House of Lords.

LORDS TEMPORAL.—Those lay peers who have seats in the House of Lords.

LORDSHIP.—Dominion; manor; seignory; domain; also, a title of honor used to a nobleman not being a duke. It is also the customary titular appellation of the judges and some other persons in authority and office.—*Wharton.*

LOSING PARTY, (in a statute). 60 Me. 285.

LOSS.—

§ 1. **Total—Partial.**—In the law of marine insurance, "the losses which arise from the various perils insured against may be either *total* or *partial*; they are *total* when the subject-matter of the insurance is wholly destroyed, or injured to such an extent as to justify the owner in abandoning to the insurer, and *partial* when the thing insured is only partially damaged, or where, in the case of an insurance on goods, the owner of them is called upon to contribute to a general average." Maud & P. Mer. Sh. 402.

§ 2. **Actual total loss.**—Total losses may again be divided into *actual* and *constructive* total losses. "Actual total losses arise where the ship or cargo is totally destroyed or annihilated, or where they are placed by any of the perils insured

against in such a position that it is wholly out of the power of the insured to procure their arrival. Thus, where by means of a peril insured against, a ship founders at sea, or is actually destroyed, or even where she is so much injured that she ceases to retain the character of a ship, and becomes a wreck or a mere congeries of planks, the loss is total and actual, although the form of the ship may still remain; and in these cases the assured may recover for a total loss without abandonment." Maud & P. Mer. Sh. 402.

§ 3. **Constructive total losses.**—"Losses are constructively total when the subject-matter of the insurance, although still in existence, is either actually lost to the owners or beneficially lost to them, and notice of abandonment has been given to the underwriters. Thus, where the ship, although existing as a ship, is captured or laid under an embargo, and has not been recaptured or restored before action brought, so that she is lost to the owners; or where she is so damaged by a peril insured against as to be innavigable, and is so situated that either she cannot be repaired at the place in which she is, or cannot be repaired without incurring an expense greater than her value when repaired, the insured may abandon and treat the loss as total." Maud & P. Mer. Sh. 404; Sm. Merc. Law 382 *et seq.*; *Aitchison v. Lohre*, 4 App Cas. 755. See ABANDONMENT; INSURANCE; POLICY.

Loss, (proof of). 1 Hill (N. Y.) 172; 6 Watts (Pa.) 164.

— (in an insurance policy). 12 Pet. (U. S.) 379.

— (in statute relative to actions against insurance companies). 36 Ohio St. 545.

Loss, TOTAL, (in an insurance policy). 6 Mass. 472; 15 Wend. (N. Y.) 453, 532.

Losses, (in insurance policy). 3 Pet. (U. S.) 222; 10 *Id.* 517; 2 Barn. & Ald. 72; 5 *Id.* 171.

Losses AND MISFORTUNES, (in a policy of insurance). 3 Barn. & Ald. 398.

Lost, (when a deed is not). 9 Ind. 323.

— (when ship is presumed to be). Str. 1199.

— (instruments, proof of). 1 Cox (N. J.) 379; 1 Gr. (N. J.) 221, 222; 1 Sax. (N. J.) 525; South. (N. J.) 773; 12 Wend. (N. Y.) 173, 533; 14 *Id.* 619; 6 Watts (Pa.) 288.

Lost ARTICLE, (finder is not guilty of larceny). 14 Johns. (N. Y.) 294.

LOST GRANT.—In England, before the Prescription Act (*q. v.*), a claim to an

easement could in theory only be supported either where it had been enjoyed from time immemorial, or where the claimant could prove that it had been created by a deed of grant. But after the Stat. 21 Jac. I. c. 16, had limited the time for bringing possessory actions for land to twenty years, the courts adopted the same period as sufficient to give rise to an easement, on the presumption that it had been created by a deed of grant which had been lost, "and juries were directed so to find in cases in which no one had the faintest belief that any grant had ever existed, and where the presumption was known to be a mere fiction." (*Angus v. Dalton*, 3 Q. B. D. 105.) This presumption of a lost grant has been deprived of its importance in the case of most easements by the Prescription Act, but it is not altogether obsolete in England, and still exists in most of the States. See SUPPORT.

LOST INSTRUMENTS.—See ACCIDENT, § 1; EVIDENCE, § 11.

LOST OR NOT LOST.—Words inserted in a maritime policy of insurance to prevent the operation of the rule that if a ship is lost at the time of insurance, the policy is void, although the insured did not know of the loss. The words operate to make the underwriter liable, even where the subject-matter of insurance had not vested in the insured at the time of the occurrence of the loss; for instance, if a merchant, having bought goods at sea, were to insure them "lost or not lost," the policy would entitle him to recover from the underwriter in respect of a loss sustained during the voyage, but before the purchase. Sm. Merc. Law 354. See INSURANCE; LOSS; POLICY.

LOT—LOT MEAD.

§ 1. A lot is the same thing as a dole (*q. v.*)

§ 2. A lot mead, or lot meadow, is an open field divided into lots or doles. (Elt. Com. 27. See DOLE; OPEN FIELDS.) These lot meads seem to have originated in certain manors where a piece of meadow land was periodically allotted to the freehold tenants of the arable land in the manor. Wms. Real Prop. 501. See INHERITANCE, § 5; SEVERALTY.

LOT, or LOTH.—The thirteenth dish of lead in the mines of Derbyshire, which belonged to the crown.—*Wharton*.

Lot, (in an agreement). 2 Hen. & M. (Va.) 622.

— (verdict of a jury hv). 10 Wend. (N. Y.) 595.

LOT OF SUNDRIES, (in a declaration). 15 Serg. & R. (Pa.) 9.

LOT AND SCOT.—Certain duties which must be paid by those who claim to exercise the elective franchise within certain cities and boroughs, before they are entitled to vote. It is said that the practice became uniform to refer to the poor-rate as a register of "scot and lot" voters, so that the term, when employed to define a right of election, meant only the payment by a parishioner of the sum to which he was assessed on the poor-rate. (Reg. Elec. (6 edit.) 198; 1 Doug. 129.)—*Brown*.

LOTHERWITE, or LEYERWIT.—A liberty or privilege to take amends for lying with a bond-woman without license. See LAIBWITE.

LOTS, (of land, in a statute). 59 Ind. 396.

LOTTERY.—A game of chance; a distribution of prizes by chance. By 10 and 11 Wm. III. c. 17, all lotteries were declared to be public nuisances, and all grants, patents, or licenses for the same to be contrary to law; and such is now the law in most if not all of the States. But as lotteries were found a ready mode for raising money for the service of the State, and for charitable uses, they have been from time to time sanctioned by statutes passed expressly for this purpose, both in England and in some of the States. A lottery thus legalized in one State does not however become legal in another.

LOTTERY, (defined). 1 Abb. (U. S.) 275; 74 N. Y. 63, 66; 8 Phil. (Pa.) 457; 3 Ore. 286; 42 Tex. 580; 1 Leg. Gaz. 37.

— (what constitutes). 59 Ill. 160; 73 Mo. 647; 33 N. H. 329; 3 Vr. (N. J.) 398; 3 Zab. (N. J.) 465; 4 Id. 789; 3 Den. (N. Y.) 88; 4 Serg. & R. (Pa.) 161.

— (what is not). 2 Dill. (U. S.) 229; 2 Mill (S. C.) 128.

— (distinguished from "gaming"). 2 Crim. L. Mag. 652.

— (in State constitution). 32 How. (N. Y.) Pr. 341.

— (in a statute, what is). 12 Abb. (N. Y.) Pr., n. s., 210; 7 N. Y. 223, 240.

LOTTERY TICKETS, (what constitutes). 97 Mass. 583.

— (are goods, wares, and merchandise). 2 Whart. (Pa.) 165.

Lou le ley done chose, la ceo done. remedie a venger a ceo (2 Rolle 17): Where the law gives a right, it gives a remedy to recover.

LOUAGE.—The contract of hiring and letting in French law. It may be either (1) of things, or (2) of labor. The varieties of each are the following: (1) Letting of things—(a) *bail à loyer*, being the letting of houses; (b) *bail à ferme*, being the letting lands. (2) Letting of labor—(a) *loyer*, being the letting of personal service; (b) *bail à cheptel*, being the letting of animals. See **HIRING**; **LOCATIO CONDUCTIO**.

LOUISIANA FUNDS, (promissory note payable in). 3 Bouv. Inst. 629 n.

LOURCOURDUS.—A ram, or bell-wether. —*Cowell*.

LOVE-DAY.—The day on which any dispute was amicably settled between neighbors; or a day on which one neighbor helps another without hire.

LOWBOTE.—A recompense for the death of a man killed in a tumult. —*Cowell*.

LOW-WATER MARK.—That part of the sea-shore to which the waters recede when the tide is lowest. —*Wharton*.

LOW-WATER MARK, (defined). 3 Mass. 352; 60 Pa. St. 339.

LOYAL.—(1) Lawful; according to law. (2) Disposed to uphold the lawful government; faithful to the powers that be.

LOYER.—See **LOUAGE**.

Lubricum linguae non facile trahendum est in poenam (Cro. Car. 117): A slip of the tongue ought not lightly to be subjected to punishment.

LUCID INTERVAL.—An interval of sanity separating two attacks of insanity. Perfect sanity is not required to constitute a lucid interval in the sense in which the phrase is now used; it is sufficient that the lunatic knows what he is doing, and that his act is not affected by a delusion (*q. v.*) An act done during a lucid interval is as valid, and involves the same liabilities and responsibilities, as the act of a sane man. Pope Lun. 17, 18. See **LUNATIC**.

LUCID INTERVAL, (defined). 2 Del. Ch. 260.

LUCRATIVA CAUSA.—A consideration which is voluntary, that is to say, a gratuitous gift, or such like. It was opposed to *onerosa causa*, which denoted a valuable consideration. It was a principle of the Roman law that two lucrative causes could not concur in the same person as regarded the same thing, that is to say, that when the same thing was bequeathed

to a person by two different testators, he could not have the thing (or its value) twice over. —*Brown*.

LUCRATIVA USUCAPIO.—This species of *usucapio* was permitted in Roman law only in the case of persons taking possession of property upon the decease of its late owner, and in exclusion or forfeiture of the heir—whence it was called *usucapio pro herede*. The adjective *lucrativa*, denoted that property was acquired by this *usucapio* without any consideration or payment for it by way of purchase; and as the possessor who so acquired the property was a *malæ fidei* possessor, his acquisition, or *usucapio*, was called also *improba*, (*i. e.* dishonest;) but this dishonesty was tolerated (until abolished by Hadrian) as an incentive to force the *heres* to take possession, in order that the debts might be paid and the sacrifices performed; and as a further incentive to the *heres*, this *usucapio* was complete in one year. —*Brown*.

LUCRATIVE OFFICE, (defined). 8 Blackf. (Ind.) 329; 44 Ind. 101.

LUCRATIVE TITLE, (defined). 13 Cal. 471.

LUCRI CAUSA.—For the purpose of gain. The term expressing the motive which induces theft.

LUCRUM.—A small slip or parcel of land.

LUGGAGE.—See **BAGGAGE**.

LUMINARE.—A lamp or candle set burning on the altar of any church or chapel, for the maintenance whereof lands and rent-charges were frequently given to parish churches, &c. —*Kenn. Gloss*.

LUMP WORK, (synonymous with "job work"). Penn. (N. J.) 1043.

LUNACY.—Lunacy means either (1) the condition or status of a lunatic (*q. v.*); or (2) judicial proceedings taken before the proper court or officer, for the purpose of making inquiry into the state of mind of persons alleged to be lunatics, of taking charge of them and their property if they are found to be lunatics, and for removing the restraint on their restoration to sanity. The proceedings generally consist (but the practice differs much in the several jurisdictions) of (a) a petition presented to the proper tribunal alleging the insanity, and supported by affidavits of medical men and a relative of the alleged lunatic, and praying for an inquiry; (b) an order by the court, directing the inquiry to be taken; (c) the inquiry before a master or referee, with or without a jury, at which witnesses are examined and the alleged lunatic inspected. The "finding," or re-

sult of the inquiry is stated in a document called the "inquisition," which consists of the verdict of the jury or (if there was no jury) of the master's or referee's certificate.*

LUNACY, (defined). 17 Am. Dec. 311.

LUNATIC.—

§ 1. This word is used in law in three senses, to denote (1) a person who has attacks of intermittent insanity separated by lucid intervals ("*Lunaticus qui gaudet lucidis intervallis*," and sometimes is of good and sound memory [*i. e.* mind], and sometimes *non compos mentis*." 4 Co. 124b; Co. Litt. 247a), or suffers from delusions (*q. v.*); (2) a person who, from unsoundness of mind, is incapable of managing himself or his affairs, and has been found or adjudged to be so by inquisition; and (3) a person detained in an asylum on account of unsoundness of mind.

§ 2. The word is used in the first sense when it is a question whether a person was insane or not when he entered into a contract, made his will, or did some other civil act; the general rule being that a contract or conveyance, &c., by a lunatic is voidable unless it was entered into by the other party without notice of his state of mind, *bonâ fide* and for valuable consid-

eration, and has been executed so that there cannot be a *restitutio in integrum*, but the principle is not satisfactorily settled.† (*See* DELUSION.) A petition for divorce may be presented by the committee of a lunatic. (*Baker v. Baker*, 5 P. D. 142; 6 *Id.* 12.) The term "lunatic" is not now often used with reference to criminal responsibility, having been superseded by the term "insanity" (*q. v.*) *See* Pope Lun. 6, 14 *et seq.*

§ 3. In its second sense, "lunatic" includes not only insane persons and idiots, but also persons imbecile from age or infirmity, so that they are incapable of managing themselves or their affairs. *See* LUNACY.

§ 4. In its third sense the word means a "proper person to be taken charge of and detained under care and treatment." (Stat. 16 & 17 Vict. c. 96, schedules.) Such lunatics are divided into (1) pauper lunatics and criminal lunatics, who are confined and maintained at the public expense; and (2) other lunatics, who are maintained either in private houses or in charitable institutions. Provision has been made by numerous statutes, both in England and America, for the licensing and regulation of lunatic asylums and for the visitation of lunatics so confined. For an

*In England, if the person has thus been found a lunatic, a statement called a "state of facts and proposal," setting forth the result of the inquiry, and showing who are the heir-at-law and next-of-kin of the lunatic, his position in life, age, property, &c., the persons proposed as committees of his person and estate, and what sum should be allowed for his maintenance, is laid before the master. Evidence having been produced on these points, the master makes his report, giving the result of the inquiries, and his recommendations as to the appointment of committees, management of property, maintenance, &c., (called "consequential directions," because they are to be carried out on the confirmation of the report); and the report is submitted to the lord chancellor for confirmation, with or without a petition. In the former case the confirmation is by order, in the latter, by *fiat*. The custody of the lunatic's person and estate is then granted to the committees, and provision is made for his maintenance, &c. If the lunatic recovers his sound mind, he may obtain his release from restraint by presenting a petition for a *supersedeas*, and on the order being made, a writ of *supersedeas* issues, by which the *fiat*, inquisition, and other proceedings are superseded, determined, annulled, and discharged; or the inquisition may be suspended

for a time to test the effect of the removal of restraint.

Where the property of a lunatic does not exceed £1000 in value, or £50 a year, the lord chancellor has by the Lunacy Regulation Act, 1862, § 12, power to make such order as he may consider expedient for the purpose of rendering the lunatic's property available for his maintenance, or for carrying on his business, without directing an inquiry as in ordinary cases; thus the income of the property may be ordered to be paid to some person to be applied for the maintenance of the lunatic. Pope Lun. 212; Elm. Lun.

The High Court also has jurisdiction to authorize the income of the property of a person of unsound mind to be applied for his maintenance; this is done in an action for the administration of the property, instituted in the Chancery Division. *In re Bligh*, 12 Ch. D. 364; *In re T—*, 15 *Id.* 78. *See* MAINTENANCE. As to lunatic trustees, *see* TRUSTEE ACT.

† Pope Lun. 234. As to the wills of lunatics. *see Id.* 327 *et seq.*, and *Banks v. Goodfellow*, L. R. 5 Q. B. 549; *Smee v. Smee*, 5 P. D. 84. Lunacy revokes an authority given by the lunatic while sane, but he continues to be liable for his agent's acts so far as concerns persons having no notice of his insanity. *Drew v. Nunn*, 4 Q. B. D. 661.

enumeration of the English statutes, &c., relating to this subject, *see* Pope Lun. 496 *et seq.*; 3 Steph. Com. 112 *et seq.* *See* VISITOR.

LUNATIC, (defined). 1 Barb. (N. Y.) 436, 440; 2 Johns. (N. Y.) 232; 3 Atk. 173; 4 Co. 124b.

— (who is not). 12 Ves. 450.

LUNDRESS.—A sterling silver penny, which was only coined in London. Lownd's Essay on Coins 17.

LUPANATRIX.—A bawd or strumpet. 3 Inst. 206.

LUPINUM CAPUT GERERE.—To be outlawed, and have one's head exposed, like a wolf's, with a reward to him who should take it.—*Cowell*.

LURGULARY.—Casting any corrupt or poisonous thing into the water.

LUXURY.—Excess and extravagance, which was formerly an offense against the public economy, but is not now punishable. 1 Jac. I. c. 25. *See* 19 and 20 Vict. c. 64, which repealed the Statute of Nottingham, 10 Edw. III. Stat. 3, *de cibariis utendis*.

LYCH-GATE.—The gate into a churchyard, with a roof or awning hung on posts over it to cover the body brought for burial, when it rests underneath.—*Wharton*.

LYEF-YELD, or LEF-SILVER.—A small fine paid by a customary tenant to his lord, for leave to plough or sow.—*Cowell*.

LYING.—*See* LIE.

LYING AT A WHARF, (construed). 2 McCord (S. C.) 105.

LYING AT ANCHOR, (in a policy of insurance). 19 Hun (N. Y.) 284, 286.

LYING BY.—A person who, by his presence and silence at a transaction

which affects his interests, may be fairly supposed to acquiesce in it if he afterwards proposes to disturb the arrangement, is said to be prevented from doing so by reason that he has been *lying by*. *See* ESTOPPEL, § 6; LACHES.

LYING DAYS, (in charter-party). L. R. 10 Q. B. 346.

LYING IN FRANCHISE.—Waifs, wrecks, estrays and the like, which may be seized without suit or action. 3 Steph. Com. (7 edit.) 258.

**LYING IN GRANT, or IN LIV-
ERY**.—*See* GRANT, § 2.

LYING IN THIS GOVERNMENT, (in a statute). 2 Mass. 393.

LYING IN WAIT.—Being concealed until a victim of a proposed crime shall arrive. It is mentioned in some of the statutes, dividing murder into degrees, as one of the evidences of deliberate intention to kill, which marks murder in the first degree.—*Abbott*.

LYING IN WAIT, (not synonymous with "concealed"). 55 Cal. 207.

LYING UP, (in an insurance policy). 5 Robt. (N. Y.) 473.

LYNCH-LAW.—Mob vengeance upon a person suspected of crime. *See* LIDFORD LAW.

LYNDHURST'S (LORD) ACT.—This statute (5 and 6 Will. IV. c. 54) renders marriages within the prohibited degrees absolutely null and void. Theretofore such marriages were voidable merely.

M.

M.—The brand or stigma of a person convicted of manslaughter, and admitted to the benefit of clergy. It was burned on the brawn of the left thumb. *See* BURNING IN THE HAND.

MACADAMIZING, (of street, what is). 50 Cal. 68.

MACE.—A large staff, made of the precious metals, and highly ornamented. It is used in England, as an emblem of authority and carried before certain public functionaries by a mace-bearer.

MACE GREFF.—One who buys stolen goods, particularly food, knowing it to have been stolen. Brit. c. xxix.

MACE-PROOF.—Secure against arrest

MACHER.—A mace-bearer; an officer attending the Court of Sessions in Scotland.

**MACHECOLLARE, or MACHE-
COULARE**.—To make a warlike device over a gate or other passage like to a grate, through which scalding water or ponderous or offensive

things may be cast upon the assailants. Co. Litt. 5a.

MACHINATION.—Planning evil; the act of setting some plot or conspiracy on foot.

MACHINE, (defined). 4 Fish. (U. S.) Pat. Cas. 175.

— (in a conveyance). 7 Greenl. (Me.) 9.

MACHINERY, (in an insurance policy). 111 Mass. 540.

— (in a statute). 12 Allen (Mass.) 75.

MACHINERY AND EFFECTS, (in a chattel mortgage). 62 How. (N. Y.) Pr. 27.

MACHOLUM.—A barn or granary open at the top; a rick or stack of corn.—*Spel. Gloss.*

MACTATOR.—A murderer.

MADE, (when a deed is). 1 Cranch (U. S.) 239. — (in a treaty). 3 Am. L. J. 58.

MADE AND DEMANDED, SUCH ASSESSMENT, (in a statute). 3 Dowl. & Ry. 42.

MADE AND PAID, MONEY ACTUALLY, (in a statute). 26 Ohio St. 312.

MADE THE NOTE, A., (imports that A. signed it). 8 Mod. 307.

MADE THEIR PROMISSORY NOTE, (in a declaration). 50 Vt. 122.

MADE USEFUL, (in a warranty of a set of teeth). 6 Cush. (Mass.) 505.

MADE VOID, (in a statute). Pet. (U. S.) C. C. 39.

MADMAN.—*See* INSANITY; LUNACY; MENTAL ALIENATION.

MÆC-BURGH.—Kindred; family.

MÆG-BOT.—Compensation for homicide, paid by the perpetrator to the kinsman or family of the slain.—*Ang. Inst. Eng.*

MÆRE.—Famous; great; noted; as *Ælmore*, all famous.—*Gibb. Camd.*

MAGIC.—Witchcraft and sorcery. 9 Geo. II. c. 5; and 5 Geo. IV. c. 83. *See* 4 Steph. Com. (7 edit.) 210, and title WITCHCRAFT.

Magis de bono quam de malo lex intendit (Co. Litt. 78b): The law is in favor rather of a good than a bad construction, or intention. If in a contract the words used are capable of two constructions, the one in conformity with, and the other against the law, the former is adopted. Every accused person is presumed in the law to be innocent until he be proved guilty.

MAGISTER.—A master or ruler; a person who has attained to some eminent degree in science.—*Cowell.*

MAGISTER AD FACULTATES.—An ecclesiastical officer who grants dispensations.

MAGISTER NAVIS.—The master of a ship.

MAGISTER SOCIETATIS.—The manager of a partnership.

MAGISTRACY.—(1) The body of officers who administer the laws; (2) the office of a magistrate.

MAGISTRALIA BREVIA.—*See* BREVIA MAGISTRALIA.

MAGISTRATE.—

§ 1. The term "magistrate" is sometimes used in a wide sense to denote a person charged with duties of government, and being either supreme, namely, the sovereign, or chief executive officer of a nation or State, *e. g.* the president of the United States, or governor of a State, or subordinate, namely, those officers who are appointed by or are subject to the sovereign. (2 Steph. Com. 318, 619, following Blackstone.) In practice, however, "magistrate" means a judicial officer having a summary jurisdiction in matters of a criminal or *quasi*-criminal nature, and is commonly used in America to designate two classes of judicial officers—justices of the peace, and police justices.

§ 2. In this sense of the word magistrates are (in England) of two kinds, honorary and stipendiary. The former class consists of justices of the peace (*q. v.*) The latter class includes the magistrates appointed to act in certain populous places (such as the metropolis) in lieu of the ordinary justices. These magistrates, who are also called "police magistrates," generally have wider powers than ordinary justices.* To this class also belong the recorders in boroughs, and the recorder and common serjeant in the city of London. *See* those titles.

§ 3. As to the jurisdiction of magistrates generally, *see* JUSTICE OF THE PEACE. As to their liability for acts committed by them, *see* CORAM NON JUDICE; JUDGE, § 2.

MAGISTRATE, (defined). 32 Ark. 124.

— (in a statute). 13 Pick. (Mass.) 523.

MAGISTRATE, OR OFFICER, CHIEF, (who is). 5 Binn. (Pa.) 296, 303.

— (in a statute). 3 Yeates (Pa.) 426.

*As to metropolitan police magistrates, *see* Stats. 2 and 3 Vict. c. 71; 10 and 11 Vict. c. 82, (repealed by Summary Jurisdiction Act, 1879); 11 and 12 Vict. cc. 42, 43; 17 and 18

Vict. c. 20; 18 and 19 Vict. c. 126; 21 and 22 Vict. c. 73; 26 and 27 Vict. c. 97; 32 and 33 Vict. c. 34. Parts of these acts are repealed by the Summary Jurisdiction Act, 1879.

MAGNA ASSISA.—The grand assize. See *ASSIZE*; *GRAND ASSIZE*.

MAGNA ASSISA ELIGENDA.—See *DE MAGNA ASSISA ELIGENDA*.

MAGNA CENTUM.—The great hundred, or six score.—*Wharton*.

MAGNA CHARTA.—The name usually given to the charter originally granted by King John, and afterwards re-enacted and confirmed by parliament (more than thirty times, according to Coke,) in the reigns of Henry III. and Edward I.* The charter now in force is the Statute 9 Henry III., with which the English statute book commences. In addition to provisions respecting the feudal tenures, now of no practical importance, the charter contained provisions to protect the subject from abuse of the royal prerogative in the matter of arbitrary arrest and imprisonment, and from amercements, purveyance and other exactions. It also provided for the proper administration of justice, for the uniformity of weights and measures, and the protection of foreign merchants. 4 Steph. Com. 499. For a fuller review of its provisions, see *Wharton*.

MAGNA NEGLIGENTIA.—Great or gross negligence (*q. v.*)

Magna negligentia culpa est, magna culpa dolus est (D. 50, 16, 226): Gross negligence is fault; gross fault is fraud.

MAGNA PRECARIA.—A great or general reap-day.—*Cowell*.

MAGNUM CONCILIUM.—Anciently the King's Court of Parliament (or *Aula Regis*), sitting without the commons, and exercising judicial functions.

MAGNUS PORTUS.—The town and port of Portsmouth, in England.

MAHOGANY TABLES, (in a declaration). 8 Wheel. Am. C. L. 195.

MAIDEN.—An instrument formerly used in Scotland for beheading criminals. It consisted of a broad piece of iron about a foot square, very sharp in the lower part, and loaded above with lead. At the time of execution it

was pulled up to the top of a frame about ten feet high, with a groove on each side for it to slide in. The prisoner's neck being fastened to a bar underneath, and the sign given, the maiden was let loose, and the head severed from the body. The prototype of the guillotine.—*Wharton*.

MAIDEN ASSIZE.—When, at the assizes, no person has been condemned to die, it is termed a "maiden assize."—*Brown*.

MAIDEN RENTS.—A noble paid by the tenants of some manors on their marriage. This was said to be given to the lord for his omitting the custom of *merchet*, whereby he was to have the first night's lodging with his tenant's wife; but it seems more probably to have been a fine for license to marry a daughter.—*Cowell*; *Wharton*. See *MARCHET*.

MAIGNAGIUM.—A brasier's shop, or perhaps a house.—*Cowell*.

MAIHEM.—See *MAYHEM*.

MAIHEMATUS.—Maimed, or wounded.

Maihemium est homicidium inchoatum (3 Inst. 118): Mayhem is incipient homicide.

Maihemium est inter crimina majora minimum, et inter minora maximum (Co. Litt. 127): Mayhem is the least of great crimes, and the greatest of small.

Maihemium est membri mutilatio; it dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum (Co. Litt. 126): Mayhem is the mutilation of a member, and can be said to take place when a man is injured in any part of his body so as to be useless in fight.

MAIL.—A bag of letters carried by the post, or the vehicle which carries the letters; also, armor.

MAIL, (defined). 6 Daly (N. Y.) 558.

— (in a statute). Baldw. (U. S.) 105.

MAILE.—A kind of ancient money, or silver halfpence; a small rent. 9 Hen. V.

MAILED, (in register of notary). 43 Superior (N. Y.) 341.

MAILS AND DUTIES.—In the Scotch law, the rents of an estate, whether in money or victuals.—*Bell Diet*.

MAIM, (distinguished from "wound"). 11 Cox C. C. 125.

*"It is called *Magna Charta*, not for the length or largeness of it, (for it is but short in respect to the charters granted of private things to private persons now a dayes being *elephantine chartes*), but it is called the great charter in

respect of the great weightinesse and weightie greatnesse of the matter contained in it in few words, being the fountaine of all the fundamentall lawes of the realme." Co. Litt. 81a.

MAIM, (equivalent to "cripple"). 4 Tex. App. 586.

—— (to, implies a permanent injury). 11 Iowa 414.

—— (in a statute). 7 Mass. 247; 50 N. Y. 598.

MAIMING.—Depriving of any necessary part. See **MAYHEM**.

MAIMING, (an indictment for). 3 Yeates (Pa.) 282.

MAIN SEA, (defined). 3 Barb. (N. Y.) 203; 7 N. Y. 113, 555.

—— (in compact of 1833 between New Jersey and New York, fixing their boundaries). 73 N. Y. 393, 396.

MAINAD.—A false oath; perjury.—*Cowell*.

MAINE-PORT.—A small tribute, commonly of loaves of bread, which in some places the parishioners paid to the rector in lieu of small tithes.—*Cowell*.

MAINOUR, **MANOUR**, or **MEINOUR**.—A thing taken away which is found in the hand (*in manu*) of the thief who took it.—*Cowell*.

MAINOVRE, or **MAINEUVRE**.—A trespass committed by hand. See 7 Rich. II. c. 4.

MAINPERNABLE.—That which may be held to bail. See Stat. West. I., 3 Edw. I. c. 15.

MAINPERNOR—**MAINPRISE**.—Mainprise literally means a taking into the hand, and is used in the old books to signify the process of delivering a person to sureties or pledges (mainperners) who undertook to produce him again at a future time. The term, therefore, included bail (*q. v.*), but it also had a wider signification, for bail only applied to cases where a man was arrested or imprisoned, while a man could be mainperned who had not been arrested or imprisoned, *e. g.* in an appeal of felony and other obsolete proceedings. (4 Inst. 179.) The term has quite fallen into disuse.

MAIN-RENT.—Vassalage.

MAINSWORN.—Foresworn with hand on book. Hob. 125.

MAINTAIN, (defined). 17 Ohio 340.

—— (in fence act). 48 Ind. 216.

—— (in liquor act). 105 Mass. 467.

MAINTAIN AND KEEP IN REPAIR, (in a deed). 71 Me. 148.

MAINTAIN AND WORK, (in railway charter). 11 Ch. D. 625.

MAINTAIN, KEEP, (in a covenant). 1 Hill (N. Y.) 580.

MAINTAINED, (in a statute). 48 Ind. 216.

MAINTAINING A MINISTER AND PUBLIC WORSHIP, (in a will). 116 Mass. 167.

MAINTAINORS.—Persons who second or support a cause in which they are not interested, by assisting either party with money, or in any other manner. See next title.

MAINTENANCE.—**NORMAN-FRENCH**: *maintenir*, (Britt 37b.) to support; from *manus*, a hand, and *tenere*, to hold.

§ 1. In civil law, maintenance is the supply of necessities, such as food, lodging, clothing, &c.

§ 2 By court.—Where property is being administered in an action or other proceeding, and the persons absolutely or presumptively entitled to it are incompetent to support themselves (as where they are infants or lunatics), the court will direct a proper proportion of the income to be expended for their maintenance. (Wats. Comp. Eq. 594; Pope Lun. 187, 218; Vane v. Vane, 2 Ch. D. 124.) Such an order may also be obtained, in the case of infants, in a summary way, without the institution of an action.

§ 3. Under settlement.—A maintenance clause in a marriage settlement or will, by which property is given to infants on their attaining majority, or the like, is one which authorizes the trustees to expend the income of the property in maintaining and educating the infants during their minority. See **ACCUMULATION**; **LUNACY**, § 3.

§ 4. In criminal law, maintenance "signifieth in law a taking in hand, bearing up or upholding of quarrels and sides, to the disturbance or hindrance of common right . . . and it is twofold, one in the country and another in the court." (Co. Litt. 368b.) An instance of maintenance in the country occurs where one person assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty. (Litt. § 701; 1 Hawk. P. C 249.) This kind of maintenance is said to be punishable in England, only at the suit of the king. Co. Litt. 368b.

§ 5. Maintenance in the courts includes champerty and embracery (*q. v.*), and is also used generally to denote the offense committed by a person who, having no interest in a suit, maintains or assists either party, with money or otherwise, to prosecute or defend it. (Hawk. 249; Steph. Cr. Dig. 86; 1 Russ. Cr. 354.) The punishment at common law is fine and

imprisonment. It is also prohibited by numerous statutes. Hawk. 255 *et seq.*; Stat. 32 Hen. 8, c. 9. See BARRETRY.

MAINTENANCE, (defined). 64 Ala. 66; 40 Conn. 570; 3 Harr. (Del.) 208; 8 Johns. (N. Y.) 220; 35 Vt. 69; 30 Wis. 228; 15 Am. Dec. 316 *n.*; 11 Mees. & W. 682; Co. Litt. 368 b; Hawk. P. C. 393.

— (what is). 57 Ga. 263; 6 Mass. 418; 7 *Id.* 76; 5 Pick. (Mass.) 359.

— (what is not). 18 How. (U. S.) 507; 20 Ala. 521; 36 *Id.* 504; 5 Dana (Ky.) 520; 1 Me. 265, 292; Bright. (Pa.) 44.

— (of infirm parent). 16 Johns. (N. Y.) 281.

— (when an action will not lie for). 8 Johns. (N. Y.) 220.

— (what will exempt from a charge of illegal). 3 Cow. (N. Y.) 623, 647.

— (when not allowed). 3 Bro. Ch. 59.

— (as consideration for a deed). 1 Rawle (Pa.) 349.

— (a devise of, when a lien upon the land). 1 Root (Conn.) 233.

— (in a statute). 4 Conn. 557.

— (in a will). 126 Mass. 433; 2 Sandf. (N. Y.) Ch. 91; 3 Wend. (N. Y.) 111; Carth. 25; 2 Con. & L. 30; 7 Jur. 273.

MAINTENANCE AND SUPPORT, (in a will). 4 Ch. D. 233; 1 Swanst. 558.

MAINTENANCE OF HIS NEPHEW AND FAMILY, (in a will). 1 Russ. & M. 364-368.

MAINTENANCE OF THE CHILD, (in a statute). 2 Conn. 155, 158.

MAISNADA.—A family. Mon. Ang., tom. 2, p. 219.

MAISON DE DIEU.—A monastery, hospital, or almshouse.

MAISURA.—A house, mansion, or farm.—*Cowell.*

MAJESTY.—A title of sovereigns. It was first used among the English in the reign of Henry VIII.

MAJOR.—(1) Greater. (2) An officer in the army. (3) A person of full age, as distinguished from a minor.

MAJOR, (in a statute). 10 Pet. (U. S.) 655.

MAJOR GENERAL.—A military officer next in rank above a brigadier general. He commands a division and sometimes even an army.

Major hæreditas venit unicuique nostrum a jure et legibus quam a parentibus (2 Inst. 56): A greater inheritance comes to every one of us from right and the laws than from parents.

Major numerus in se continet minorem (Bract. 16): The greater number contains in itself the less.

MAJOR PART OF THEM, (in a statute). 4 East 17; 9 *Id.* 246, 263; 12 Ad. & E. 139, 153 *n.*

MAJORA REGALIA.—The greater rights of the crown, such as regard the royal character and authority. (1 Bl. Com. 241; 2 Steph. Com. (7 edit.) 475.)—*Wharton.*

Majoræ poena affectus quam legibus statuta est, non est infamis: One affected with a greater punishment than is provided by the laws is not infamous.

Majori summæ minor inest: In the greater sum the less is included.

MAJORITY.—(1) Full age; a minor comes of age, in the eye of the law, on the day preceding the anniversary of his birth. (2) The greater number. (3) The office and rank of major.

MAJORITY, (is a quorum). 1 McCord (S. C.) 52.

— (of a private association cannot bind the minority except by agreement). 4 Johns. (N. Y.) Ch. 573.

— (in bankruptcy act). 11 Bank. Reg. 108.

— (in a statute). 7 Cow. (N. Y.) 402.

MAJORITY, LEGAL, (what is). 8 Op. Att. Gen. 62.

MAJORITY OF EACH DEFINITE BODY, (necessary to make a valid election). 1 Barn. & C. 492, 498.

MAJORITY OF ELECTORS, (in a constitutional provision). 22 Minn. 53.

— (in law providing for change of county seat). 10 Minn. 110; 16 *Id.* 249; 22 *Id.* 53.

MAJORITY OF MEMBERS ELECTED, (in state constitution). 5 W. Va. 85; 13 Am. Rep. 640.

MAJORITY OF THE BODY, (in a charter). 2 Gr. (N. J.) 220, 239.

Majus dignum trahit ad se minus dignum (Co. Litt. 43): The more worthy draws to itself the less worthy.

MAJUS JUS.—A writ or law proceeding in some customary manors, in order to try a right to land.—*Cowell.*

MAKE AN AWARD, (in a statute). South. (N. J.) 833.

MAKE AWAY WITH, (when actionable). 6 Cow. (N. Y.) 76.

MAKE, DEVISE, USE, OR SELL, (in patent law). Fess. Pat. 288.

MAKE OVER, (in a deed). 3 Johns. (N. Y.) 484; 18 *Id.* 60, 79.

MAKE OVER AND BEQUEATH, (in a will). 14 Serg. & R. (Pa.) 91.

MAKE UP HIS CASH, (in a covenant). 2 Vern. 518.

MAKER.—The person who signs a promissory note, who stands in the same situation after the note is indorsed, as the

acceptor of a bill of exchange. Byles Bills (11 edit.) 5, 215.

MAKING, (a promissory note, includes delivery). 6 Barb. (N. Y.) 662; 15 Id. 232; 2 Cow. (N. Y.) 536; 10 How. (N. Y.) Pr. 274; 7 T. R. 596.

MAKING A LIBEL, (charging a person with, is actionable). 3 Serg. & R. (Pa.) 255, 256.

MAKING AN ARTICLE, (in a statute). L. R. 4 Q. B. 209.

MAKING LAW.—Clearing one's self of an action, &c., by an oath and the oath of neighbors.—O. N. B. 161; Kitchin 192.

MAKING OF THE SALE, (in a statute). 12 N. Y. Week. Dig. 464.

MAL.—A prefix meaning bad, wrong, fraudulent; as mal-administration, mal-practice, malversation, &c.

MALA.—(1) Bad. (2) A mail, or port-mail; a bag to carry letters, &c.

MALA FIDES.—Bad faith. The opposite of *bona fides* (q. v.)

Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est (6 Co. 39): Bad grammar does not vitiate a deed. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided.

MALA IN SE—MALA PROHIBITA.—*Mala in se* are acts which are wrong in themselves, such as murder, as opposed to *mala prohibita* (*mala quia prohibita*), or those acts which are only wrong because they are prohibited by law, such as smuggling. The distinction was formerly of importance with reference to the exemption of ambassadors, which, according to the earlier writers, only extended to *mala prohibita*; but this is no longer the case. 2 Steph. Com. 486. See AMBASSADOR.

MALA PRAXIS.—This is where a medical practitioner injures his patient by neglect, want of skill, or for experiment. Ordinary cases of *mala praxis* give rise to a right of action for damages. (See TORT.) In some cases of gross misconduct the party may be indicted. 3 Steph. Com. 376. See, also, MISCARRIAGE.

MALA PROHIBITA.—See MALA IN SE.

MALANDRINUS.—A thief or pirate. Wals. 383.

MALBERGE.—A hill where the people assembled at a court, like the English assizes; which by the Scotch and Irish were called "parley hills."—*Du Cange*.

MALE.—The sex which begets off spring; also, a member of that sex.

MALE CHILDREN, (as equivalent to "male descendants"). 7 L. J. Ch. n. s. 115; 3 Myl. & C. 559.

— (in a will). 2 Jur. 273.

MALE CREDITUS.—One of bad credit, who is not to be trusted. Fleta l. 1, c. xxxviii.

Maledicta est expositio quæ corrumpit textum (4 Co. 35): It is a bad exposition which corrupts the text.

MALEDICTION.—A curse, which was anciently annexed to donations of lands made to churches or religious houses, against those who should violate their rights.—*Cowell*.

MALEFACTION.—A crime, an offense.

MALEFACTOR.—One who has committed a criminal offense; also, one convicted of crime.

Maleficia non debent remanere impunita; et impunitas continuum affectum tribuit delinquenti (4 Co. 45): Evil deeds ought not to remain unpunished; and impunity affords continual incitement to the delinquent.

Maleficia propositis distinguuntur (Jenk. Cent. 290): Evil deeds are distinguished from evil purposes.

MALEFICIUM.—In the civil law, waste; damage; injury.

MALESON, or **MALISON**.—A curse.—*Bailey*.

MALESWORN, or **MALSWORN**.—Forsworn.—*Cowell*.

MALETENT—MALETOUTE.—A toll for every sack of wool. Stat. 25 Edw. I. c. 7.

MALFEASANCE.—The doing of an unlawful act, *e. g.* a trespass. (Britt. 72a; Cro. Jac. 266; 3 Steph. Com. 863.) Norman-French, *mau* or *mal*, wrongly, and *fere*, to do. See MISFEASANCE; NONFEASANCE; TORT.

MALFEASANCE, (in a statute). 33 Conn. 109.

MALICE—MALICIOUS.—LATIN: *malitia*, fraud, dishonesty, evil intention, from *malus*, bad. Dirksen Man. Lat.

§ 1. **Malice in law**.—"Malice, in the legal acceptation of the word, is not con-

fined to personal spite against individuals, but consists in a conscious violation of the law to the prejudice of another." (*Per* Lord Campbell in *Ferguson v. Earl of Kinnoul*, 9 Cl. & F. 321, cited *Shortt Copyr.* 389.) "Malice, in common acceptation, means ill-will against a person; but in its legal sense, it means a wrongful act done intentionally without just cause or excuse. If I give a perfect stranger a blow likely to produce death, I do it of *malice*, because I do it *intentionally*, and without just cause or excuse. . . . If I am arraigned of felony, and willfully stand mute, I am said to do it of *malice*, because it is intentional, and without just cause or excuse." *Per* Bayley, J., in *Bromage v. Prosser*, 4 Barn. & C. 255, cited *Id.* See *Steph. Cr. Dig.* 144.

§ 2. **Malice in fact.**—Personal spite or ill-will is sometimes called "actual malice," "express malice," or "malice in fact," to distinguish it from "malice in law." See *Toogood v. Spyring*, 1 Crompt. M. & R. 193; *Wright v. Woodgate*, 2 *Id.* 577, cited *Shortt* 428; *per* Brett, L. J., in *Clark v. Molyneux*, 3 Q. B. D. 247; *Capital and Counties Bank v. Henty*, 5 C. P. D. 514. As to the effect of actual malice in questions of libel and slander, see **PRIVILEGE**.

§ 3. **Malice aforethought.**—In the definition of murder, malice aforethought exists where the person doing the act which causes death has an intention to cause death or grievous bodily harm to any person (whether the person is actually killed or not), or to commit any felony whatever, or has the knowledge that the act will probably cause the death of or grievous bodily harm to some person, although he does not desire it, or even wishes that it may not be caused. *Steph. Cr. Dig.* 144; 1 *Russ. Cr.* 641. See **HOMICIDE**; **MANSLAUGHTER**; **MURDER**.

MALICE, (defined). 1 *Hughes* (U. S.) 525, 528; 4 *Mas.* (U. S.) 115; 20 *Ga.* 156; 1 *Ind.* 344; 36 *Me.* 460, 484; 66 *Id.* 324; 111 *Mass.* 498; 9 *Metc.* (Mass.) 93, 115; 35 *Mich.* 16; 30 *Miss.* 673; 31 *Mo.* 147; 48 *Id.* 152, 323; 74 *Id.* 211; *Wright* (Ohio) 20, 392; *Add.* (Pa.) 156; 2 *Browne* (Pa.) 251; 58 *Pa. St.* 9; 12 *Phil.* (Pa.) 553; 8 *Tex. App.* 90, 626; 3 *Crim. L. Mag.* 217; 9 *West. L. Jour.* 407; 2 *Barn. & C.* 257, 268; 4 *Id.* 255; 1 *T. R.* 518; 1 *Chit. Gen. Pr.* 46; 2 *Stark. Ev.* 902.
— (what constitutes). 122 *Mass.* 235, 239; 9 *Metc.* (Mass.) 410; 15 *Pick.* (Mass.) 337.

MALICE, (not synonymous with "spite" or "hatred"). 77 *Ill.* 32.

— (when implied in law). 50 *Vt.* 130.
— (to support action for malicious prosecution). 77 *Ill.* 32.

— (in action of libel). 3 *Barn. & C.* 584.
— (in action of slander). 4 *Barn. & C.*

247, 254.

— (in act of congress). 1 *Curt. (U. S.)* 501; 2 *Sumn. (U. S.)* 584.

MALICE AFORETHOUGHT.—See **MALICE**, § 3.

MALICE AFORETHOUGHT, (defined). 35 *Mich.* 16; 74 *Mo.* 211; 1 *Hale P. C.* 450; *Stark. Cr. Pl.* 83.

— (what constitutes). 2 *Mas. (U. S.)* 91; 29 *Ga.* 594; 5 *Cush. (Mass.)* 306; 13 *Mo.* 382; 49 *N. H.* 399; 58 *Pa. St.* 9.

— (means malice with premeditation). 70 *Mo.* 594.

— (synonymous with "premeditated design"). 58 *Miss.* 778.

MALICE EXPRESS, (defined). 3 *Harr. (Del.)* 378; 26 *Ga.* 156; 37 *Me.* 463; 1 *Ashm. (Pa.)* 289.

— (what is). 21 *Miss.* 263.

— (distinguished from "implied malice"). 12 *Phil. (Pa.)* 553.

MALICE IMPLIED, (defined). 3 *Harr. (Del.)* 378.

— (what is). 21 *Miss.* 263; 2 *Hilt. (N. Y.)* 40.

MALICE IN FACT, (defined). 66 *Me.* 202; 2 *Stark. Ev.* 904.

MALICE IN LAW, (defined). 2 *Stark. Ev.* 903.

MALICIOUS, (defined). 1 *Dak. T.* 472; 9 *La. Ann.* 35.

— (in slander). 14 *Vr. (N. J.)* 21.

MALICIOUS ABANDONMENT.—See **ABANDONMENT**, § 5.

MALICIOUS ARREST.—This is where a person maliciously, and without reasonable cause, procures another to be arrested. He thereby makes himself liable to an action for damages. The term is practically confined to cases of arrest in civil cases. Underh. *Torts* 738; *Broom Com. L.* 738 See **DEBTOR'S ACT**; **FALSE IMPRISONMENT**; **MALICE**; **TORT**.

MALICIOUS ARREST, (defined). 1 *Chit. Gen. Pr.* 48.

MALICIOUS INJURIES, (in a declaration). 1 *Mau. & Sel.* 304.

MALICIOUS INJURIES TO THE PERSON.—Every one who unlawfully and maliciously wounds or causes any grievous bodily harm to any person, or shoots or attempts to shoot him with the intent in any such case to maim, disfigure

disable, or do some grievous bodily harm to him, is guilty of felony, and liable, in England, to penal servitude for life, (Stat. 24 and 25 Vict. c. 100, § 18 *et seq.*; Steph. Cr. Dig. 156;) and in America, to imprisonment for various terms of years, according to the statutes of the several States. See MAYHEM.

MALICIOUS INJURIES TO PROPERTY.—Those injuries to property which proceed rather from malicious or wanton motives than from any proposed gain to the offender. They are in many cases criminal acts. They include, among other offenses, arson (*q. v.*), causing injuries to buildings, &c., by gunpowder, destroying trees, cattle, &c., exhibiting false signals, removing buoys, &c., causing injuries to machinery, goods in process of manufacture, canals, telegraphs, ships, &c. Actual malice against the owner of the property is not essential. 2 Russ. Cr. 892.

MALICIOUS MISCHIEF.—See MALICIOUS INJURIES TO PROPERTY.

MALICIOUS MISCHIEF, (what is). 3 Dev. & B. (N. C.) L. 130.
—— (indictment for). 65 Ga. 410.

MALICIOUS PROSECUTION is where a person maliciously institutes proceedings, civil or criminal, against another without probable cause, *i. e.* believing that he is innocent. For the damage thereby caused to the accused he can sustain an action against the wrong-doer. Broom Com. L. 741; Underh. Torts 99. See MALICE; TORT.

MALICIOUS PROSECUTION, (defined). 1 Chit. Gen. Pr. 48.

—— (what constitutes). 6 Dowl. & Ry. 8.
—— (when action lies). Penn. (N. J.) 978.

MALICIOUSLY, (defined). 122 Mass. 19, 35.
—— (as indicating intent). 116 Mass. 343.
—— (as meaning a wicked intent to injure). 30 Conn. 80.

—— (as used in an indictment). 127 Mass. 15.

—— (in an indictment for perjury). 5 Barn. & C. 245, 250.

—— (in a declaration). 13 Serg. & R. (Pa.) 233; 1 Saund. 242 *n.*

—— (in a statute). 5 Mas. (U. S.) 192; 1 Sumn. (U. S.) 394; 3 Cush. (Mass.) 553; 105 Mass. 463.

MALICIOUSLY AND FELONIOUSLY, (in an indictment). 127 Mass. 15, 17.

MALICIOUSLY KILLING THE BEAST OF ANOTHER, (what constitutes). 7 Ala. 728; 1 Minn. 292; 3 Yerg. (Tenn.) 278.

MALICIOUSLY REFUSING A VOTE, (what will establish a charge of). 2 La. Ann. 963.

MALIGNARE.—To malign or slander; also, to maim.

MALITIA PRÆCOGITATA.—Malice aforethought. See MALICE, § 3.

Malitia supplet ætatem (Dyer 104b): Malice supplies [the want of] age. In the case of infants, between the ages of seven and fourteen years, committing crimes (other than the crime of rape, which with them is a legal impossibility), the child's criminal capacity, *i. e.* intelligence, may be proved by showing that, notwithstanding his tender years, he was fully aware of the character of the criminal act, his wicked (or prematurely developed) intelligence supplying the lack of age, upon this maxim, "Malice supplies the defect of years." It is doubtful if the maxim applies to children under the age of seven years; but the corresponding maxim of evidence, *sapientia supplet ætatem* does, undoubtedly, apply even to them.

MALO GRATO.—In spite; unwillingly

MALT LIQUOR, (in liquor act). 55 Ala. 16 158; 67 Me. 242.

MALT MULNA.—A quern or malt mill

MALTREATMENT, (synonymous with "bad treatment"). 2 Allen (Mass.) 142.

MALT-SHOT, or MALT-SCOT.—A certain payment for making malt.—*Somner.*

MALUM IN SE.—See MALA IN SE.

Malum non habet efficientem, sed deficientem causam (3 Inst. Proem.): Evil has not an efficient, but a deficient cause.

Malum non præsumitur (4 Co. 72): Evil is not presumed.

MALUM PROHIBITUM.—See MALA PROHIBITA.

MALUM PROHIBITUM, (distinguished from "malum in se"). 7 Wend. (N. Y.) 279; 1 Bl. Com. 54; 2 Stark. Ev. 88, *n.*

Malum quo communius eo pejus: The more common an evil is, the worse.

Malus in uno malus in omnibus: Bad in one respect, bad in all. This maxim is like that other maxim, *falsus in uno falsus in omnibus*, and both maxims are most dangerous in their indiscriminate application. As applied to witnesses, it means that where their testimony is discredited or falsified in one thing, it is discredited and falsified in whole, whereas, in point of fact, the utmost effect of the partial discredit should be to render one's

judgment of the rest more severely careful. The maxim expresses a small truth in a very exaggerated form.

MALUS USUS EST ABOLENDUS (Litt. § 212): An evil or invalid custom [or an abuse] ought to be abolished.

MALVEILLES.—Ill-will; crimes and misdemeanors; malicious practices.—*Cowell*.

MALVEIS PROCURORS.—Such as used to pack juries, by the nomination of either party in a cause, or other practice. (Art. super Chart. c. x.)—*Cowell*.

MALVEISA.—A warlike engine to batter and beat down walls.

MALVERSATION.—Misbehavior in an office, employment, or commission, as breach of trust, extortion, &c.

MAN.—A human being of the male sex who has arrived at the age of puberty. The word is often used, however, as including the entire human race; and in old English law, it meant a vassal, or feudatory.

MAN, (in a statute). 31 Ark. 268, 271.

— (when does not include "woman"). Wilberf. Stat. L. 123.

MAN, DOG, OR CAT, (in a statute). Wilberf. Stat. L. 216.

MANA.—An old woman.—*Jacob*.

MANACLES.—Chains for the hands; shackles.

MANAGE, (in a will). 7 Johns. (N. Y.) 558.

MANAGE AN ESTATE, (in a will). 7 Cow. (N. Y.) 81.

MANAGE AND SUPERINTEND, (in sole trader act). 15 Nev. 45.

MANAGED CARELESSLY AND NEGLIGENTLY, (in a declaration). 10 R. I. 22.

MANAGER.—

§ 1. **Chancery practice**.—In English Chancery practice, when a receiver (*q. v.*) is required for the purpose not only of receiving rents and profits, or of getting in outstanding property, but of carrying on or superintending a trade or business, he is usually denominated a "manager," or a "receiver and manager." The most usual cases in which managers are appointed, are those in which partnership trades are to be carried on, or which relate to mines or collieries. Dan. Ch. Pr. 1617. *See ADMINISTRATION*, § 1.

§ 2. If the trade or property is abroad, or in one of the colonies, and the manager must necessarily be resident there, it is usual to add to the order directing the appointment of a manager an order for the appointment of one or more consignee or consignees resident in this

country, to whom the produce of the property in question may be remitted, and by whom it may be disposed of. *Id.*

As to the appointment of a manager by way of execution of a judgment, *see EXECUTE*, § 7.

§ 3. **Bankruptcy**.—In bankruptcy, a manager of the business of the debtor may be appointed by the court at any time after the presentation of the petition for adjudication or arrangement by liquidation or composition. A manager may also be appointed by the creditors themselves in an arrangement by liquidation or composition. English Bankr. Act, 1869, § 13; Bankr. Rules (1870) 260; Robs. Bankr. 335, 653.

§ 4. **Parliamentary**.—In parliamentary practice, where the two houses of parliament have a conference (*e. g.* to settle amendments to a bill as to which there is a difference between the two houses), each house appoints managers (the same as the American "conference committee;" *see CONFERENCE*, § 2), to represent it, and the conference is held between the managers. (May Parl. Pr. 454.) As to managers on an impeachment, *see* that title.

MANAGER, (in companies act). L. R. 10 Q. B. 329.

MANAGING, (in a statute). 6 Pet. (U. S.) 517.

MANAGING AGENT, (in a statute). 13 Hun (N. Y.) 150; 19 *Id.* 405, 408.

MANAGING OWNER OF SHIP.

—The managing owner of a ship is one of several co-owners, to whom the others, or those of them who join in the adventure, have delegated the management of the ship. He has authority to do all things usual and necessary in the management of the ship and the delivery of the cargo, to enable her to prosecute her voyage and earn freight, with the right to appoint an agent for the purpose. It seems that it is a question to be decided in each case, whether a managing owner has been appointed by all his co-owners or only by some of them, and consequently whether he has power to bind all of them or only some of them; "he binds those whose agent he is; he binds nobody besides." *Per* Bowen, J., in *Frazer v. Cuthbertson*, 11 Q. B. D. 98; *see* *Coulthurst v. Sweet*, L. R. 1 C. P. 649. *See, also*, *SHIP'S HUSBAND*.

§ 2. **Registration**.—Under the English Merchant Shipping Act, 1876, § 36, the name and address of the managing owner for the time being of every registered British ship must be registered, or if there is no managing owner, the ship's husband or other person to whom the management of the ship is entrusted, must be registered.

MANAGIUM.—A mansion-house or dwelling-place.—*Cowell*.

MANBOTE.—A compensation or recompense for homicide, particularly due to the lord for killing his man or vassal, the amount of which was regulated by that of the *wer*.—*Anc. Inst. Eng.*

MANCA, MANCUS, or MANCUSA.—A square piece of gold coin, commonly valued at thirty pence.—*Cowell.*

MANOEPS.—A farmer of the public revenues; one who sold an estate with a promise of keeping the purchaser harmless; one who bought an estate by outcry; one who undertook a piece of work and gave security for the performance.—*Wharton.*

MANCHE-PRESENT.—A bribe; a present from the donor's own hand.

MANCIPATE.—To enslave; to bind; to tie.

MANCIPATIO.—In Roman law, a process of conveyance applicable to *res mancipi* only. It was effected by means of a balance and scales, with a piece of bronze to represent the purchase money or price (*per aes et librum*); and the ceremony of the *mancipatio* took place in the presence of five witnesses and of the *libripens* (balance-holder), and of the *familiae emptor* (purchaser), making, in all, seven persons who were witnesses of the act of the vendor. In case the vendor was the true owner, the *mancipatio* at once transferred the *dominium* to the purchaser; but otherwise, the process of *usucapio* was required to complete the conveyance of the *dominium*. Where *traditio* of a *res mancipi* was made, then *traditio* plus *usucapio* equalled (in effect) *mancipatio*. There could be no *mancipatio* of *res nec mancipi*; and in Justinian's time, there being no *res mancipi*, it followed that there was no *mancipatio*, but only delivery (*traditio*), and which delivery (when made by the true owner) had the same effect as the old *mancipatio* in transferring the *dominium*; but *traditio* (when made otherwise) required *usucapio* or *longi temporis possessio* to complete that transfer.—*Brown.*

MANCIPI VEL NEC MANCIPI.—In Roman law, a division of *res* (*i. e.* things). It corresponded as nearly as may be to the early distinction of English law into real and personal property—*res mancipi* being objects of a military or agricultural character, and *res nec mancipi* being all other subjects of property. Like personal estate, *res nec mancipi* were not originally either valuable *in se* or valued. The distinction was completely obsolete in Justinian's time, both classes having then the same level.—*Brown.*

MANCIPIUM.—In Roman law, the momentary condition in which a *filius*, &c., might be when in course of emancipation from the *potestas*, and before that emancipation was absolutely complete. The condition was not like the *dominica potestas* over slaves; but slaves are frequently called *mancipia* in the non-legal Roman authors.—*Brown.*

MANCIPIE.—A clerk of the kitchen, or caterer, especially in colleges.—*Cowell.*

MANDAMUS.—The writ of mandamus is so called from the words *robus mandamus*, "we command you," with which, when the writ was in Latin, the mandatory part commenced. (See the form given in Tapping 437, 438, and 11 Co. 93a (Bagg's Case).) Originally, "mandamus" was the generic name for a class of writs varying in their form and object. (For examples, see *Termes de la Ley*; Tapping 1. n. (a).) but totally different from the modern prerogative writ, which, for the sake of distinction, was called a "special mandamus" (R. v. Gower, 3 Salk. 30.) In the fourteenth, and the beginning of the fifteenth century, the writ was in form a mere letter-missive from the sovereign. During the latter half of the fifteenth century, the writ was directed to issue on a petition to parliament for redress. It thus became in form a parliamentary writ, and, being then chiefly used to enforce restitution to public offices, was commonly known as the "writ of restitution." Finally it became an original writ, issuable by the Court of King's Bench in all cases where there was a legal right, but no other specific remedy. Tapping 8.

§ 1. A writ issued in certain cases to compel the performance of a duty. It is directed to the person who is subject to the duty, and not to a sheriff or similar officer. Writs of *mandamus* are of two kinds.

§ 2. Prerogative writ of *mandamus*.—The prerogative writ of *mandamus* issues in the name of the sovereign, from the highest court of general jurisdiction, "in some cases where the injured party [the prosecutor] has also another more tedious method of redress, as in the case of admission or restitution to an office; but it issues in all cases where the party hath a right to have anything done, and hath no other specific means of compelling its performance," (3 Bl. Com. 110; 3 Steph. Com. 630,) especially where the obligation arises out of the official status of the respondent, and is hence of a public or quasi-public character. Thus, the writ is used to compel the election of corporate officers; to compel public officers to perform duties imposed upon them by common law or by statute; to compel inferior courts to proceed in matters within their jurisdiction, (see *PROCEDENDO*; *PROHIBITION*;) to compel the lord of a manor to admit a person as tenant of copyholds. (See *ADMITTANCE*.) It is also applicable in certain cases where a duty is imposed by statute for the benefit of an individual. Thus, it lies to compel a railway company to comply with the provisions of its charter for the benefit of private persons, *e. g.* to build a bridge, open a road, &c. The writ recites the facts giving rise to the

obligation, and commands the defendant to do the act or show cause why he does not. He may excuse himself by showing that the prosecutor on his own showing is not entitled to the writ, or by traversing some material fact alleged in the writ, or by alleging fresh matter as an answer to the prosecutor's case. If the return is insufficient or false, the prosecutor may move to quash it, or may traverse, plead or demur to it, or may bring an action to recover damages for a false return. (*See RETURN.*) In any case, if the prosecutor is successful the court awards a peremptory *mandamus*, to which no excuse or other return, except performance of the act required, is allowed. (3 Bl. Com. 111; Tapping 7, 400 *et seq.* An appeal may be brought from the granting of a peremptory *mandamus*; *Reg. v. All Saints, Wigan*, 1 App. Cas. 611.) By the English Common Law Procedure Act, 1854, § 77, the provisions of that act, and of the Common Law Procedure Act, 1852, so far as they are applicable, are extended to the pleadings and proceedings upon the prerogative writ of *mandamus*.

§ 3. *Mandamus for the examination of witnesses.*—When witnesses whose evidence is required in a cause pending in the English High Court, are resident in India or other parts of the queen's dominions abroad, a writ in the nature of a *mandamus* may be issued requiring the judges of the principal court in the colony to examine the witnesses and send over the depositions to be used at the trial. Chit. Gen. Pr. 345; Sm. Ac. 95. *See* COMMISSION TO TAKE TESTIMONY.

§ 4. *Action of mandamus.*—By the C. L. P. Act, 1854, (§§ 68-74,) the plaintiff in any action in any of the superior courts (except *replevin* and *ejectment*) might claim a writ of *mandamus*, commanding the defendant to fulfill any duty in the fulfillment of which the plaintiff was personally interested. The construction put upon this section limited it to cases where the duty is of a public or quasi-public nature, (*e. g.* to compel a railway company to carry out a compulsory purchase (*Fotherby v. Met. Rail. Co.*, L. R. 2 C. P. 183,)) and not merely personal, such as that arising out of a contract. (*Benson v. Paul*, 6 El. & B. 273; 25 L. J. Q. B. 274.) If the plaintiff recovered judgment the court might, besides issuing execution in the ordinary way for the costs and damages, issue a peremptory writ of *mandamus* directed to the defendant and commanding him forthwith to perform the duty to be enforced. (Day C. L. P. Acts 819 *et seq.*; Republic of Costa Rica v. Stronsberg, 11 Ch. D. 323.) The Judicature Acts contemplate actions of *mandamus*, (Judicature Act, 1875, App. A, part II., § 4,) but contain no provisions on the

subject; the provisions of the C. L. P. Act, 1854, therefore appear to remain in force, subject to the interpretation above mentioned.

§ 5. *Interlocutory mandamus.*—By the English Judicature Act, 1873, and under the provisions of numerous reformed codes of proceeding in America, an interlocutory *mandamus* may be granted in any case in which it shall appear to the court to be just or convenient. *See* INJUNCTION.

MANDAMUS, (defined). 56 Ala. 596.
— (is a "suit" within United States constitution). 2 Pet. (U. S.) 449; 14 *Id.* 564.

MANDANT.—The principal in the contract of mandate.

Mandata licita strictam recipiunt interpretationem; sed illicita latam et extensam (Bac. Max. Reg. 16): Lawful authority is to receive a strict interpretation; unlawful authority a wide and extended interpretation. *See per* Byles, J., in *Parkes v. Prescott*, 38 L. J. Ex. 111, and L. R. 4 Ex. 182.

Mandatarius terminos sibi positos transgredi non potest (Jenk. Cent. 53): A mandatary cannot exceed the bounds placed upon himself.

MANDATARY.—He to whom a mandate, charge, or commandment is given; also, he that obtains a benefice by *mandamus*.

MANDATE.—

§ 1. *Judicial.*—A judicial command, charge, commission.

§ 2. *Bailment.*—A bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. The person employed is called, in the civil law, "mandant" or "mandator," and the person employing "mandatarius" or "mandatary." The distinction between a mandate and a deposit is, that in the latter the principal object of the parties is the custody of the thing; and the service and labor are merely accessorial. In the former the labor and service are the principal objects of the parties, and the thing is merely accessorial. Three things are necessary to create a mandate: (1) that there should exist something which should be the subject of the contract, or some act or business to be done; (2) that it should be done gratuitously; (3) that the parties should voluntarily intend to enter into the contract. A mandatary incurs three obligations: (1) to do the act which is the

object of the mandate, and with which he is charged; (2) to bring to it all the care and diligence that it requires; (3) to render an account of his doings to the mandator. A mandator contracts to reimburse a mandatary for all expenses and charges reasonably incurred in the execution of the mandate, and also to indemnify him for his liability on all contracts which arise incidentally in the proper discharge of his duty. The contract of mandate may be dissolved either by the renunciation of the mandatary, at any time before he has entered upon its execution, or by his death; for, being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But if the mandate be partly executed, there may, in some cases, arise a personal obligation on the part of the representatives to compel it. Story Bailm. c. iii.

§ 3. In the canon law, a *réscript* of the pope, by which he commands some ordinary collator or precentor to put the person there nominated in possession of the first benefice vacant in his collation. As to their abuses, see 2 Hall. Mid. Ages 212.

§ 4. Royal mandates to judges for interfering in private causes, constituted a branch of the royal prerogative, which was given up by Edward I. And the 1 W. & M. st. 2, c. 2, declared that the pretended power of suspending or dispensing with laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.—*Wharton*.

§ 5. A direction or request.—Thus a check is a mandate by the drawer to his banker to pay the amount to the transferee or holder of the check. Smith v. Union Bank, 1 Q. B. D. 33.

MANDATE, (defined). 42 Miss. 525.

—— (in the code). 5 La. Ann. 672; 7 Id. 207.

MANDATOR.—Director. See MANDATE, § 2.

MANDATORY.—Imperative; compulsory. The mandatory part of a writ is that part by which the person to whom it is directed is commanded to do the act required of him; the mandatory part of a statute is that part which must be obeyed or the act done is void, as distinguished from the "directory" part of the law, disregard of which is not necessarily fatal.

MANDATORY INJUNCTION, (when may be granted). 20 Am. Dec. 390 n., 396 n.

MANDATUM.—See BAILMENT, § 2.

MANDAVI BALLIVO.—I have commanded the bailiff. If a bailiff of a liberty have the execution and return of a writ, the sheriff may return that he commanded the bailiff to execute it; and if the bailiff have not made a return, the sheriff should return that fact accordingly (*mandavi ballivo, qui nullum dedit responsum*); or if he have made a return, the sheriff should return it. 1 Chit. Arch. Prac. (12 edit.) 628.

MANENTES.—Tenants. Obsolete.—*Cowell*.

Manerium dicitur a manendo, secundum excellentiam, sedes magna, fixa, et stabilis (Co. Litt. 58): A manor is so called from *manendo*, according to its excellence, a seat, great, fixed, and firm.

MANGONARE.—To buy in a market. Leg. Etheld. c. 24.

MANGONELLUS.—A warlike instrument for casting stones against the walls of a castle.—*Cowell*.

MANHOOD, (defined). 1 Dev. & B. (N. C.) Eq. 585.

MANIA.—Mental alienation (*q. v.*) See, also, INSANITY; LUNACY.

MANIA, (defined). 2 Abb. (U. S.) 507.

MANIA A POTU.—Otherwise denominated *delirium tremens* (*q. v.*), a disease induced from the intemperate use of spirituous liquors or certain other diffusible stimulants.

MANIFEST.—In commercial navigation, a document signed by the master, containing the names of the places where the goods have been laden, and the places for which they are destined, the name and tonnage of the vessel, the name of the master, and the place to which the vessel belongs, a particular description of the packages on board, marks, numbers, &c., the goods contained in them, and the names of the shippers and consignees, as far as known. The manifest must be made out, dated and signed by the captain, at places where the goods, or any part, are taken on board.—*Wharton*.

MANIFEST, (in a statute). 71 N. Y. 481, 486.

Manifesta probatione non indigent (7 Co. 40): Things manifest do not require proof.

MANIFESTO.—A public declaration made by a prince, in writing, showing his intentions to begin a war or other enterprise, with the motives that induce him to it, the reasons on which he founds his rights and pretensions.—*Encycl. Lond.*

MANIPULUS.—A handkerchief, which the priest always had in his left hand.—*Blount.*

MANNER AFORESAID, (in pleading). Plowd. 39.

MANNER AND FORM, (in articles of marriage settlement). 1 Sim. & S. 477.

— (in an indictment). 3 Stark. Ev. 1588.

— (in pleading). Gould. Pl. 316.

— (in verdict of jury). 2 Serg. & R. (Pa.) 43.

MANNER AND FORM FOLLOWING, THAT IS TO SAY, (in an indictment). 1 Doug. 193.

MANNER AND PROPORTION AS HE SHALL THINK PROPER, IN SUCH, (in a devise). 4 Call (Va.) 477.

MANNER FOLLOWING, (in a deed). 5 T. R. 522.

MANNER, IN LIKE, (in a statute). 8 Nev. 15, 29; 81 Pa. St. 27, 31.

MANNER, IN SUCH, (in a statute). 36 Conn. 447; 75 Pa. St. 39, 54.

MANNER, IN THE, (in an agreement). 2 Serg. & R. (Pa.) 544.

MANNING.—A day's work of a man.—*Cowell.* A summoning to court.—*Spel. Gloss.*

MANNIRE.—To cite any person to appear in court and stand in judgment there; it is different from *bannire*; for though both of them are citations, this is by the adverse party, and that is by the judge.—*Du Cange.*

MANNOPUS.—Goods taken in the hands of an apprehended thief.—*Cowell.* See **MANU OPERA.**

MANNUS.—A horse.—*Cowell.*

MANOR.—Manor is derived from the NORMAN-FRENCH: *manoir*, *maners*, (LATIN: *manerium* from *manere*, to remain or dwell,) a dwelling or habitation, originally applied to the mansion of the lord. (Dupon et l'ab. Gloss. s. v.; 2 Bl Com 90, n. (18); Perkins § 670) It is now generally supposed that manors were not a creation of the Norman conquest, but an adaptation to the Norman rules of tenure of the institutions known as village communities which existed among the Saxons. Wms Real Prop. App. C.: Wms Seis. 18; Maine Early Inst. 6; Digby Hist R P 11, 34, and the works there referred to, especially Stubbs

§ 1. Properly speaking a manor is a district of land of which the freehold is vested in a person called "the lord of the manor," of whom two or more persons, called "freeholders of the manor," hold other land, in respect of which they owe him certain free services, rents or other duties.* Hence every manor must be at least as old as the Statute of *Quia Emptores* (q. v.); indeed, immemorial existence is essential to a

manor. (Co. Copyh. § 31.) The land which is vested in the lord is called the "demesnes" (q. v.) and comprises (1) the land of which the lord is seised, and which may be wholly in his own occupation or in that of his lessees for years, but in most manors is to a great extent in the occupation of the copyhold and customary tenants of the manor, (though copyholders are not essential to a manor; see an instance of a manor without copyholders in *Warrick v. Queen's College*, L. R. 6 Ch. 716;) and (2) the waste lands of the manor, usually subject to the tenants' customary rights of common. (See COMMON.) A court baron for the freeholders, and a customary court for the copyholders (if any), are necessary incidents to every manor, and the principal manor in a parish usually has an advowson appendant to the demesnes. (Elt. Copyh. 14.) There are also, in general, either annexed or appurtenant to the manor, a variety of franchises (q. v.) exercisable by the lord, such as the right to have a court leet, the right to waifs and strays, treasure trove, wreck, the liberties of holding fairs and markets, of taking tolls and the like. Accordingly, a manor proper is shortly defined as consisting of demesne lands, jurisdiction in a court baron, and services of free tenants in fee, who are liable to escheat (q. v.) and oye attendance at the court; or more shortly still, as consisting of demesnes and services. See DEMESNE, § 4; SERVICE.

§ 2. **Manor by reputation.**—If the number of free tenants is reduced below two, the court baron cannot be held, and the manor ceases to exist, but may survive as a manor by reputation, for the purpose of making a title to franchises or for holding copyholders' courts. ■

§ 3. **Extinguishment and suspension of manor.**—If all the demesnes are alienated, the manor is extinguished, and becomes merely a "lordship in gross;" while a temporary severance of all the demesnes, as by a lease for years, causes a suspension of the manor. *Id.* 11; Burt. Comp. § 1026; Cruise Dig. Copyhold 2; 1 Dav. Conv. 89; Co. Litt. 5a.

§ 4. **Customary manor.**—If a copyhold tenement has, by immemorial custom, been treated by the tenant as if it were itself a manor, e. g. by holding courts, granting part of it to be held of himself as copyhold, &c., this forms a customary or copyhold manor, and the tenant is called a "customary lord," although, as far as regards the principal manor, he is himself merely a copyholder of that manor, and pays fines, &c., like the other tenants. Co. Litt. 58b; *Neville's Case*, 11 Co. 17.

§ 5. "Manor" may mean the district actually or formerly comprised in a manor in the strict sense, although the land may have been separated from it by enfranchisement. *Elt. Copyh.* 15; citing *Delacherois v. Delacherois*, 11 L. L. Cas. 62.

§ 6. **In American law.**—A tract of land held of a proprietor by a fee-farm rent in money or in kind, and descending

* Strictly speaking, the land vested in the freeholders should not form parcel of the manor. (Wms. Seis. 80.) On the contrary, it is often

said to be held of the manor, which is here personified so as to represent the lord. See ANCIENT DEMESNE.

to the oldest son of the proprietor, who in New York was formerly called a "patroon."—*Bouvier*.

MANOR, (grant of). Cro. Eliz. 18.

—— (what passes by grant of). Shep. Touch. 89; 14 Vin. Abr. 118.

MANORS, (in a statute). 9 Wheat. (U. S.) 278.

MANORS OR OTHER ROYALTIES, (in a statute). Wilbert. Stat. L. 183.

MANQUELLER.—A murderer.

MANRENT.—A kind of bond between lord and vassal, by which protection was stipulated on the one hand, and fidelity with personal service on the other.

MANSE.—A house or habitation, either with or without land.

MANSE, or MANSUM PRESBYTERIAL.—The dwelling-house of the clergyman. (Par. Antiq. 431.) Sometimes called *presbyterium*.

MANSER.—A bastard.—*Cowell*.

MANSION.—The lord's house in a manor.

MANSION, (synonymous with "dwelling-house," "house," "messuage," and "burgage"). 1 Chit. Gen. Pr. 167.

—— (devise of). 2 Dowl. & Ry. 508.

MANSION-HOUSE.—A dwelling-house. 3 Inst. 64.

MANSION-HOUSE, (defined). 1 Hale P. C. 559.

—— (a church is). 4 Com. Dig. 764.

—— (in an indictment). 3 Serg. & R. (Pa.) 199.

MANSION-HOUSE AND MESSAGE, (in a statute). 4 Blackf. (Ind.) 331.

MANSION-HOUSE IN WHICH HE THEN LIVED, (in a devise). 1 Barn. & C. 350, 356.

MANSLAUGHTER.—The crime of unlawful homicide, without malice aforethought. The most frequent instances occur (1) where death is caused accidentally by an unlawful act, as where A. strikes at B. with a small stick, not intending either to kill him or to do him grievous bodily harm, and the blow kills him; (2) where death is caused by culpable negligence, as where A., whose duty it is to put a stage at the mouth of a colliery shaft, omits to do so from mere negligence, in consequence of which B. is killed; (3) where death is caused by an act done in the heat of passion, caused by provocation, as in the case of an aggravated assault, or a fight, or unlawful imprisonment.

MANSLAUGHTER, (defined). 10 Mich. 219; 25 Id. 406; 30 Id. 16; 74 Mo. 216; 2 Halst. (N. J.) 243; 1 Hale P. C. 466.

—— (distinguished from "murder"). 5 Cush. (Mass.) 307; 5 Cow. (N. Y.) 51.

MANSO, or MANSUM.—A mansion, or house.—*Spel. Gloss.*

MANSTEALING.—Kidnapping (*q. v.*)

MANSUM CAPITALE.—The manor-house, or lord's court. Par. Antiq. 150.

MANSURA.—The habitation of people in the country.—*Domesday*.

MANSUS.—A farm.—*Seld. Hist. Tilles* 62. A house; a messuage.—*Spel. Gloss.*

MANTEA.—In old records, a long robe or mantle.

MANTHEOFF.—A horse-stealer.

MANTICULATE.—To pick pockets.—*Bailey*.

MAN-TRAPS.—Engines to catch trespassers, now unlawful, unless set in a dwelling-house for defense between sunset and sunrise. 24 and 25 Vict. c. 100, § 31.

MANU FORTI.—With strong hand. A phrase used in old writs of trespass, and in pleading in cases of forcible entry.

MANU OPERA.—Cattle, or implements of husbandry; also, stolen goods taken from a thief caught in the fact.—*Cowell*.

MANUAL EXERCISE, (in a statute). 15 East 161.

MANUAL OCCUPATION, (in a statute). 15 East 167.

MANUALIA BENEFICIA.—The daily distributions of meat and drink to the canons and other members of cathedral churches for their present subsistence.—*Cowell*.

MANUALIS OBEDIENTIA.—Sworn obedience or submission upon oath.—*Cowell*.

MANUCAPTIO.—A writ that lay for a man taken on suspicion of felony, &c., who cannot be admitted to bail by the sheriff or others having power to let to mainprise.—*F. N. B.* 249.

MANUCAPTOR.—One who stands bail for another.

MANUFACTURE.—Anything made by art. As to a patent for a manufacture, see PATENT.

MANUFACTURE, (defined). 2 H. Bl. 468.

—— (loss of articles during). 2 Wheel. Am. C. L. 140, 142.

MANUFACTURED, (in a contract to prepare rock for masons). 6 Robt (N. Y.) 251, 257.

— (in a statute). 8 Johns. (N. Y.) 304.

MANUFACTURED ARTICLE, (in the tariff act). 7 How (U. S.) 785.

MANUFACTURER, (in bankrupt act). 6 Bankr. Reg. 238; 18 *Id.* 319; 100 Mass. 183; 1 Utah T. 47.

MANUFACTURES, (what are). Fess. Pat. 367.

— (in a statute). 2 H. Bl. 473; Fess. Pat. 81.

MANUFACTURING COMPANY, (in a statute). 100 Mass. 183, 184; 4 Lans. (N. Y.) 611.

MANUFACTURING CORPORATIONS, (in a statute). 106 Miss. 135.

MANUFACTURING ESTABLISHMENT, (includes what). 6 Coldw. (Tenn.) 310.

MANUFACTURING PROCESS, (in a statute). L. R. 5 Q. B. 19.

MANUFACTURING STARCH, (in an insurance policy). 18 Ill. 553.

MANUMISSION.—The making of a bondman free, which in the feudal ages was a frequent occurrence. (*See EMANCIPATION*, § 2.) Manumission was either express or implied. Manumission *express* was done by the lord granting to his vassal a deed of enfranchisement. Manumission *implied* was done by the lord entering into an obligation with his vassal to pay him money at a certain day, or granting him an annuity, or leasing lands to him by deed for a term of years, or doing any other similar act which would imply that he treated with his vassal upon the footing of a freeman. (*Termes de la Ley*.) Similar modes of dealing with a *servus* had, in Roman law, the like effect of an implied manumission; and in particular the mere circumstance of the master describing his slave in a written document as his son (*filius*), had the effect of rendering him a freeman, although not a son. (1 Just. Inst. 11, 12.) The modes of express manumission in Roman law were anciently three only, that is to say, by the rod (*vindicta*), by the census (*census*), and by will (*testamento*); but in later times, many new and simpler modes were introduced (*favore libertatis*), so much so that any declaration of intention to manumit, if made in presence of a magistrate (e. g. even at a street-crossing), would suffice.—*Brown*.

MANUMISSION, (what amounts to). Coxo (N. J.) 4.

— (instrument of, how executed). Penn. (N. J.) 10-21.

Manumittere idem est quod extra manum vel potestatem ponere (Co. Litt. 137): To manumit is the same as to place beyond hand and power.

MANUNG, or **MONUNG**.—The district within the jurisdiction of a reeve, apparently so called from his power to exercise therein one of his chief functions, viz., to exact (*amanian*) all fines.—*Anc. Inst. Eng.*

MANUPASTUS.—A domestic; perhaps the same as *hiastota*.—*Anc. Inst. Eng.*

MANUPERS.—A foot of full and legal measure.

MANURABLE.—Admitting of tillage.

MANURE, (in a covenant). 1 Man. & R. 511.

— (not incorporated with the soil is personal property). 3 N. H. 484; Toll. Ex. 150; 8 Wheel. Ann. C. L. 211.

— (will pass by deed of the land as incident thereto). 3 N. H. 503; 2 Hill (N. Y.) 142.

— (outgoing tenant is not entitled to). 6 Greenl. (Me.) 222; 21 Pick. (Mass.) 367; 15 Wend. (N. Y.) 169.

MANUS.—(1) the hand; (2) an oath, from the ceremony of laying the hand on the book; also the person taking an oath, or compurgator; (3) a condition of subjection into which females might come in Roman law, either by *coemptio*, (to their husband or a stranger,) or by *usus* or *confectio* (to their husband). It became obsolete with the establishment of the new subjection of women that was introduced by Christianity.

MANUSCRIPT.—An unpublished writing. *See COPYRIGHT*, § 8.

MANUSCRIPT, (defined). 3 Cliff. (U. S.) 537.

MANUTENENTIA.—The old writ of maintenance. *Reg. Orig.* 182.

MANWYRTH.—The value or price at which a man is estimated, according to his degree; apparently synonymous with *wey-geld*. It occurs only in the laws of Hlothhere and Radric.—*Anc. Inst. Eng.*

MANY YEARS ABSENCE, (presumption of death). 3 Serg. & R. (Pa.) 493.

MARA.—A mere, lake, or great pond, that cannot be drawn dry. *Par. Antiq.* 418; *Mon. Ang. tom.* 1, p. 666.

MARAUDER.—A soldier who commits a larceny or robbery in the neighborhood of the camp, or while wandering away from the army. (*Morl. Répert.*)—*Bouvier*.

MARCATUS.—The rent of a mark by the year anciently reserved in leases, &c.

MARCHE.—In the Scotch law, a boundary line.—*Bell. Dist.*

MARCHERS, or **LORD MARCHERS**.—Those noblemen who lived on the marches of Wales and Scotland, who, in times past, had their laws and regal power, until they were abolished by Stat. 27 Hen. VIII. c. 20.

MARCHEES.—The boundaries of countries and territories; the limits between England, Wales and Scotland. Also, in Scotland, the boundaries between private properties. *Co. Litt.* 106 b.

MARCHES, COURT OF.—An abolished tribunal in Wales, where pleas of debt or damages, not above the value of £50, were tried and determined. Cro. Car. 384.

MARCHET.—NORMAN-FRENCH: *marche* (Britt 97 b; this author also calls it "redemption of blood," or "redemption of flesh and blood," 78 a, see Spel. Gloss s v. Grimm, D. R. A. 383), *marquette* (Loys. Int. Cout. Gloss), from Latin, *mercatus*, a buying and selling.

A fine which some tenants had to pay to their lord for liberty to give away their daughters in marriage. According to the old writers, no free man could be liable to pay such a fine, but only villeins (Bract. 208 b, 26 a), and therefore it could not be claimed by custom against all the tenants of a manor. (Litt. § 209.) But in later times a free man could take lands to hold by the service of marchet, if he liked to do so. (*Id.* § 194.) The tenure by marchet seems to have been long obsolete.

MARCHIONESS.—A dignity in a woman answerable to that of marquis in a man, conferred either by creation, or by marriage with a marquis.—*Wharton*.

MARE.—The sea.

MARE, (includes "horse"). 2 Car. & P. 351. — (not included in "cattle"). 2 W. Bl. 721; 2 East P. C. 1074.

MARE CLAUSUM.—The sea closed, or close. The title of a famous work by Selden, intended as an answer to the *Mare Liberum* of Grotius.

MARE LIBERUM.—The sea free. The title of a famous treatise by Grotius, written to show that all nations have an equal right to use the sea.

MARES, COLTS AND HORSES, (in a statute). 1 Leach C. C. 83.

MARESCALL, or MARESHAL.—A marshal.

MARETTUM.—Marshy ground overflowed by the sea or great rivers. Co. Litt. 5.

MARGIN, (applied to price of stock, defined). 8 Abb. (N. Y.) Pr. N. s. 286; 49 Barb. (N. Y.) 462, 465.

MARGIN OF THE STREAM, (in a deed). 6 Cow. (N. Y.) 518, 547.

MARGINAL NOTE.—An abstract of a reported case, a summary of the facts, or brief statement of the principle decided which is prefixed to the report of the case, sometimes in the margin, is spoken of by this name. The marginal notes which appear in the statute books have not the authority of the legislature, and cannot alter the interpretation of the text. See *Marriage v. Great Eastern Ry. Co.*, 9 H. L. Cas. 82, and 31 L. J. Ex. 78.

MARGINS, (in a statute). 53 Ind. 575.

MARINARIORUM CAPITANEUS.—An admiral or warden of the ports.—*Par. Antiq.*

MARINARIUS.—A mariner or seaman.—*Par. Antiq.*

MARINE.—Belonging or relating to the sea. A general name for the navy of a kingdom or state; as also the whole economy of naval affairs, or whatever respects the building, rigging, arming, equipping, navigating and fighting ships. It comprehends also the government of naval armaments, and the state of all the persons employed therein, whether civil or military. Also, one of the marines. See **MARINES**.

MARINE CONTRACT.—A contract which has relation to business to be done at sea, or to matters particularly connected with commerce, and over which a court of admiralty commonly has jurisdiction concurrent with that of the common law courts.

MARINE CORPS.—The aggregate body of the marines (*q. v.*)

MARINE COURT IN THE CITY OF NEW YORK.—A local court originally erected for the determination of controversies between seamen, but now a court of record, possessing general jurisdiction of controversies involving not more than \$2000, and special jurisdiction of civil actions for injuries to person or character, without regard to the amount of damages claimed.

MARINE INSURANCE.—See **INSURANCE**, § 3.

MARINE INTEREST.—See **MARITIME INTEREST**.

MARINE LEAGUE.—A measure of distance on the sea, equal to one-twentieth part of a degree of latitude. See **LEAGUE**.

MARINE RISK.—The perils necessarily incident to navigation.

MARINE SOCIETY.—A charitable institution for the purpose of apprenticing boys to the naval service, &c., incorporated by 12 Geo. III. c. 67.

MARINER.—One engaged in navigating vessels upon the sea. See SEAMEN; SHIPPING ARTICLES.

MARINER, (defined). 4 Sawy. (U. S.) 105.
 ——— (includes whom). 4 Bladf. (N. Y.) 154; 8 Month. L. Rep. N. S. 672.
 ——— (a mate is). 1 Pet. (U. S.) Adm. 246.
 ——— (a pilot is). 2 Wils. 264.
 ——— (a purser is). 80 N. Y. 71, 80.
 ——— (in act of 1837). 7 How. (N. Y.) Pr. 89.
 ——— (in a statute). 4 Mass. 239, 670; 14 Id. 394; 17 Id. 49; 2 Pick. (Mass.) 597; 8 Johns. (N. Y.) 157; 1 Tuck. (N. Y.) 44.

MARINERS AND SEAMEN OF THE UNITED STATES, (in 2 Stat. at L. 203). 3 Sumn. (U. S.) 115.

MARINES.—A military force drilled as infantry, whose especial province is to serve on board ships of war when in commission. The force was first established in England about the middle of the last century.

Maris et foeminae conjunctio est de jure naturæ (7 Co. 13): The connection of male and female is by the law of nature.

MARISCHAL.—An officer in Scotland, who, with the lord high constable, possessed a supreme itinerant jurisdiction in all crimes committed within a certain space of the court, wherever it might happen to be.—*Wharton*.

MARISCUS.—A marshy or fenny ground. —*Domesd.*; Co. Litt. 5a.

MARITAGIO AMISSO PER DEFALTAM.—An obsolete writ for the tenant in frank-marriage to recover lands, &c., of which he was deforced.

MARITAGIUM.—The portion which is given with a daughter in marriage. Also, the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.—*Spel. Gloss.* See 1 Reeves (Finlason's edit.) 171.

Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra sic data quæta sit et libera ab omni seculari servitio (Co. Litt. 21): A marriage portion is either free or bound to service; it is called frank-marriage when the giver wills that land thus given be exempt from all secular service.

MARITAGIUM HABERE.—To have the free disposal of an heiress in marriage.

MARITAL.—Pertaining to a husband; incident to a husband.

MARITAL COERCION.—Coercion of the wife by the husband. Thus, if a

married woman commit an offense other than homicide, treason, or other heinous crime, by compulsion or coercion of her husband, he, not she, is deemed in law the guilty; and in many cases his presence at the time of the commission of the offense by the wife being proved, marital coercion will be presumed.

MARITAL PORTION.—That part of a deceased husband's estate to which, according to the law of Louisiana, the widow is entitled.

MARITAL RIGHTS.—The rights of a husband. The expression is chiefly used to denote the right of a husband to property which his wife was entitled to during the treaty of marriage. If, after the engagement to marry, she makes a voluntary conveyance of any part of that property without notice to the intended husband, it is considered a fraud on his marital rights, and therefore liable to be set aside, although he may not have known that she was entitled to the property. *Suell Eq.* 319; *Wms. Pers. Prop.* 446. See **JUS MARITI**.

MARITATED.—Having a husband.

MARITIMA ANGLIÆ.—The profits and emolument arising to the crown from the sea, which anciently was collected by sheriffs; but it was afterwards granted to the lord high admiral. *Par.* 8 Hen. III. m. 4.

MARITIMA INCREMENTA.—Maritime increases, i. e. lands gained from the sea. See **ALLUVION**.

MARITIME CAUSE.—A cause of action originating on the high seas, or growing out of a maritime contract. 1 Kent Com. 367 *et seq.*

MARITIME CONTRACT.—See **MARINE CONTRACT**.

MARITIME CONTRACT, (what is). 2 Gall. (U. S.) 398.

——— (what is not). 23 Ohio St. 505.

MARITIME EMPLOYMENT, (what is not). 7 Pet. (U. S.) 342.

MARITIME INTEREST.—The interest payable on hypothecations and bottomry and *respondentia* bonds is so called; and, on account of the extraordinary risk attaching to such loans, the rate of interest is usually very high, and there was never any restriction upon its amount. (See

Merc. LAW (8 edit.) 410.) The phrase is sometimes applied loosely to the interest payable by ordinary agreement upon money advanced to be hazarded in a commercial speculation.—*Brown*. See **BOTTOMRY**; **RESPONDENTIA**.

MARITIME JURISDICTION, (what is). 6 Am. L. J. 557.

MARITIME LAW.—The law relating to harbors, ships and seamen. An important branch of the commercial law of maritime nations; divided into a variety of departments, such as those about harbors, property of ships, duties and rights of masters and seamen, contracts of affreightment, average, salvage, &c. No system or code of maritime law has ever been issued by authority in America or Great Britain. The laws and practices that now obtain in these countries have been founded on the practice of merchants, the principles of the civil law, the laws of Oleron and Wisby, the works of juriconsults, the judicial decisions of our own and foreign countries, &c. Though still susceptible of amendment, the present systems correspond more nearly than any others of maritime law with those universally recognized principles of justice and general convenience on which merchants and navigators should act. See **ADMIRALTY**; **AFFREIGHTMENT**; **BILL OF LADING**; **CHARTER-PARTY**; **INSURANCE**, § 3; **LIEN**, § 6; **MERCHANT SHIPPING**; **UNDERWRITER**.

MARITIME LIEN.—A lien attaching to ship and freight for damage occasioned by ship, and which lien affords the ground of an action *in rem* in the Court of Admiralty; this lien does not attach to the cargo. The lien attaches as from the date of the damage occurring, and has precedence accordingly over all subsequent liens and rights arising *ex contractu*, excepting, *semble*, subsequent bottomry bonds. The liability of the owners of the ship is limited by the amount of the security, *i. e.* the ship and freight, but as regards the costs of the proceedings, the owners are personally liable. *Kay Sh. & S.* 917-919. See **LIEN**, § 6.

MARITIME LOAN.—See **BOTTOMRY**; **HYPOTHECATION**; **MARITIME INTEREST**; **RESPONDENTIA**.

MARITIME NATURE, (in constitution of United States). 1 U. S. L. J. 385.

MARITIME STATE.—This consists of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by act of parliament.

MARK.—(1) A token; an impression; a proof; an evidence; license of reprisals; also, formerly, a coin of the value of 13s. 4d. (2) In commerce and manufacture, a certain character struck or impressed on various kinds of commodities, either to show the place where they were made and the person who made them, or to witness that they have been viewed and examined by the officers charged with the inspection of manufactures, or to show that the duties imposed thereon have been paid. It is also used to indicate the price of a commodity. If one use the mark of another, to do him damage, an action on the case will lie, and an injunction may be obtained in Chancery. (2 Cro. 471. See **TRADE MARK**.) (3) Those who are unable to write sign a cross, for their mark, when they execute any document. 1 Steph. Com. (7 edit.) 493. See **MARKSMAN**.

MARK, (of a manufacturer). 1 Nev. & M 353.

— (instrument executed by). 12 Pet. (U. S.) 151; 1 Moo. & M. 516.

— (of a witness to a will). 5 Johns. (N. Y.) 144; 7 Halst. (N. J.) 70; 8 Ves. 185, 504; 5 Wheel. Am. C. L. 220; 8 Id. 397.

— (in a statute). 7 Halst. (N. J.) 159, 165.

MARK DISTINCTLY, (in a statute). 78 Pa. St. 166, 171.

MARKED, (of a tree). 5 Wheat. (U. S.) 308.

MARKEPENNY.—A penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets. 15 Edw. I.

MARKET.—A place set apart for the public sale and purchase of commodities. The right to hold a market, including the right to charge tolls for its use by persons selling goods therein, and the right to prevent others from setting up a new market so near as to diminish the custom of the old one, is a franchise (*q. v.*) 1 Steph. Com. 662 *et seq.*; see *Mayor of Penryn v. Best*, 3 Ex. D. 292.

MARKS, (defined). 21 Barb. (N. Y.) 294, 295; 70 N. C. 14, 15; 1 Wron. T. 897.

MARKET GELD.—The toll of a market.

MARKET OVERT.—

§ 1. Open market. In English law, market overt, in ordinary market towns, is only held on the special days provided for particular towns, by charter or prescription, but in the city of London every day, except Sunday, is market day. The market place, or spot of ground set apart by custom for the sale of particular goods, is also in ordinary towns the only market overt, but in the city of London every shop in which goods are exposed publicly for sale is market overt, though only for such things as the owner professes to trade in. (2 Steph. Com. 73.) That part of London not within the city does not seem to have the privilege of market overt. (Wms. Pers. Prop. 461.) The law of market overt has never been adopted in the United States.

§ 2. Sale in market overt.—The doctrine of market overt is that all sales of goods made therein are not only binding on the parties, but also on all other persons: so that if stolen goods are sold in market overt, the purchaser, if acting in good faith, acquires a valid title to them against the true owner, unless the latter has prosecuted the thief to conviction, in which case the goods reversion in the true owner, and the buyer is left to obtain compensation out of any money which may have been taken from the thief on his apprehension. Stat. 30 and 31 Vict. c. 35, § 9. As to negotiable instruments and other valuable securities, see Stat. 24 and 25 Vict. c. 96, § 100; Wms. Pers. Prop. 462.

§ 3. The doctrine of market overt does not apply to goods belonging to the crown, and in the case of horses it is subject to statutory restrictions. 2 Steph. Com. 73 *et seq.* See HORSE.

MARKET PLACE, (defined). 70 N. C. 14, 18.

——— (what is). 49 Ga. 476.

——— (in market act). L. R. 6 H. L. 303.

MARKET PRICE.—See VALUE.

MARKET PRICE, (defined). 2 Wash. (U. S.) 493.

——— (what is). Chip. Cont. 33.

——— (of an annuity). 2 Bro. Ch. 179 n.

MARKET, TO, (synonymous with "to sell"). 20 Barb. (N. Y.) 37.

MARKET TOWNS.—Those towns which are entitled to hold markets. 1 Steph. Com. (7 edit.) 130.

MARKET VALUE, (defined). 69 N. Y. 448.

——— (what is). 99 Mass. 345.

——— (in a statute). 4 Cliff. (U. S.) 96.

MARKETABLE.—Such things as may be sold; those for which a buyer may be found.

MARKETABLE TITLE, (what is). 6 Taunt. 263.

MARKETZELD.—See MARKET GELD.

MARKSMAN.—Where a person who cannot write is desirous of subscribing his name to a document, another person writes it for him, and he identifies it as his signature by inscribing over it, or near it, a mark, usually a cross. He is hence called a "marksman." It seems that if there is any peculiarity about the mark, evidence *ex visu scriptoris* is admissible to prove it as the handwriting of the marksman, but not otherwise. Best Ev. 329. See HAND-WRITING.

MARLEBRIDGE, STATUTE OF.—

The Stat. 52 Hen. III. A. D. 1267, enacted at Marlebridge, now said to be Marlborough. See Barr Ob. Stat. 60; 2 Reeves vii. 62; and Hale C. L. n. (b).

MARQUE.—See LETTERS OF MARQUE.

MARQUE, LETTERS OF, (ships sailing under, distinguished from "privateers"). 13 Mass. 127.

MARQUIS, or MARQUESS.—One of the second order of nobility; next in order to a duke.

MARQUISATE.—The seigniorship of a marquis.

MARRIAGE.—

§ 1. Marriage is the voluntary union for life of one man and one woman to the exclusion of all others, for the purpose of living together and procreating children, entered into in accordance with the rules as to the consanguinity (*q. v.*) or affinity (*q. v.*) of the parties, and their capacity to enter into and perform the duties of matrimony, prevailing in the place of domicile of the parties, and in accordance with the rites or formalities required by the law of the place where the marriage takes place. (Britt. 246 b; Macq. Husb. & W. 1; Browne Div. 53; 2 Steph. Com. 238; Phillim. Ecc. L. 705; Hyde v. Hyde, L. R. 1 P. & D. 130.) A marriage must not contravene the fundamental principles of Christianity, and hence a polygamous marriage, although valid according to the *lex loci*, is no marriage according to our law. Browne Div. 53.

§ 2. It is sometimes said that marriage is a contract, but this is an incomplete designation; it is true the agreement of the parties is essential to a valid marriage (see AGREEMENT, § 1); but when it has been solemnized, marriage is not only a

contract, but also a personal relation of a very special kind, (*Hyde v. Hyde*, L. R. 1 P. & D. 133; *Sottomayer v. De Barros*, 5 P. D. 101,) somewhat resembling a natural relationship.

§ 3. **Effect on property.**—Marriage affects the property as well as the person. (*See Wats. Comp. Eq. 316 et seq*) For many purposes the husband and wife are one person in law, and hence the husband cannot, at common law, give or grant property to his wife *inter vivos* (Litt. § 168), though he can under the Statute of Uses, (Wms. Real Prop. 218; and without the aid of that statute, under the provisions of most of the recent married women's acts passed in many of the States;) and a grant of land to the husband and wife by a third person, gives them an estate by entireties (*q. v.*) The general rule, at common law, is, that the husband becomes by the marriage entitled absolutely to all the choses in possession belonging to his wife in her own right (*see* REDUCTION INTO POSSESSION), and to the whole of the rents and profits of her land during the continuance of the coverture, (Macq. Husb. & W. 17; Wms. Real Prop. 214; he may also grant leases for twenty-one years of any land of which she is seized in fee under the English Settled Estates Act, 1877, § 46; *see* SETTLED ESTATES ACT,) and to her chattels real if he survives her (*see* SURVIVORSHIP); but this rule has had many exceptions engrafted on it; first, by the doctrines of equity, which allow a wife to hold separate estate (*q. v.*) and, secondly, by the Married Women's Property Acts (*q. v.*) Moreover, these rights of the husband do not extend to property held by the wife in *auter droit*, *e. g.* as executrix.

§ 4. Another rule is, that if the husband survives the wife he has (in certain cases) an interest in her lands and tenements during his life (*see* CURTESY), and *vice versa* if she survives him (*see* DOWER); but these interests are not now of frequent occurrence in England, other provisions being generally made by a settlement executed on the marriage. Wms. Real Prop. 220. *See* SETTLEMENT.

§ 5. **Husband's liability for debts.**—On the other hand, a husband was formerly liable for all the debts and liabilities of his

wife contracted before the marriage, but this rule has been altered by statute, both in England and in most, if not all, of the States, so that the husband shall be liable (if at all) for his wife's debts and liabilities to the extent of the property belonging to the wife which he shall have acquired by the marriage, or which he might have acquired (Wms. Pers. Prop. 443), and in some jurisdictions the rule is swept away altogether. *See* ASSETS, § 1.

§ 6. A wife is not criminally liable for an offense committed by her under the coercion of her husband, except in the case of treason or murder, and other heinous crimes. Rosc. Cr. Ev. 990. *See* MARITAL COERCION.

§ 7. **Marriage of ward by tenure.**—Marriage formerly signified not only the union of man and wife, but also the right of a guardian by tenure to bestow his ward in marriage, "which the law gave to the lord, not for his benefit only, but that he should match him [the ward] virtuously and in a good family without disparagement." (Co. Litt. 76 a.) If an infant tenant by knight's service refused such a marriage, the lord was entitled to the value of the marriage, *i. e.* to the amount which he would have received for giving his ward in marriage (Litt. § 110), but a guardian in socage could make no profit by the marriage of his ward. *Id.* § 123. *See* BIGAMY; DISPARAGEMENT; DIVORCE; HUSBAND AND WIFE; MARITAL RIGHTS; NECESSARIES; SETTLEMENT; SURVIVORSHIP.

MARRIAGE ACTS.—

§ 1. **Marriage by banns or license.**—The principal English Marriage Acts are the Stats. 4 Geo. IV. c. 76, and 6 and 7 Will. IV. c. 85. The former act provides for the publication of banns on three successive Sundays before the celebration of a marriage, unless it takes place by ecclesiastical license, (*see* LICENSE, § 4,) and requires that it shall be solemnized by a person in holy orders and before two credible witnesses at least. It also provides for the case of one of the parties being under age, and for the consent of his or her parent or guardian being given. In certain cases marriages not solemnized in accordance with the provisions of the act are made void, and where a marriage is solemnized between persons, one of whom is under age, by means of the false oath or fraudulent procurement of one of the parties, the person so offending is liable to forfeit all property which would otherwise accrue to him or her from the marriage.

§ 2. **Marriage by registrar's certificate.**—The Stat. 6 and 7 Will. IV. c. 85 (amended by Stats. 7 Will. IV. and 1 Viet. c. 22; 3 and 4 Viet. c. 72; 19 and 20 Viet. c. 119, and 23 Viet. c. 18,) introduced two new modes of celebrating marriages, by a certificate of the superintendent registrar of marriages with or without license. To obtain the certificate with-

out license, public notice of the intended marriage must be given for twenty-one days; the certificate with license only requires one day's notice. Under a registrar's certificate, marriages may be solemnized in any religious building registered for the purpose (except that under a certificate with license a marriage may not be solemnized in a church or chapel of the Church of England), or it may be solemnized at the registrar's office. *Browne Div. 55 et seq.; 2 Steph. Com. 246.*

§ 3. **Foreign and colonial marriages.**—Stats. 4 Geo. IV. c. 91, and 12 and 13 Vict. c. 68, provide for the marriage of British subjects abroad; and 28 and 29 Vict. c. 64, make colonial marriages valid everywhere, subject to certain restrictions. *See DOMICILE, § 2.*

§ 4. **Royal marriages.**—Under Stat. 12 Geo. III. c. 11, no descendant of King George II. other than the issue of princesses married into foreign families, may, except in certain cases, contract matrimony without the previous consent of the sovereign. 2 Steph. Com. 454.

MARRIAGE, (defined). 58 Ala. 190; 19 Ind. 53; 4 How. (N. Y.) Pr. 107.

—(what constitutes). 10 East 290; 49 Miss. 357; 26 Barb. (N. Y.) 177; 4 Bradf. (N. Y.) 28; 1 Hill (N. Y.) 270; 4 Johns. (N. Y.) 52; 4 N. Y. 230; 15 Id. 345; 23 Id. 90; 8 Paige (N. Y.) 574; 7 Wend. (N. Y.) 47, 50.

—(has two senses). 6 P. D. 47.

—(what requisite to the validity of). 7 Mass. 48; 1 Hill (N. Y.) 270; Co. Litt. 79b; 1 Hagg. Cons. 216; 13 Mees. & W. 261.

—(contracts in restraint of, void). South. (N. J.) 756; Reeve Dom. Rel. 220.

—(from what may be inferred). 4 Johns. (N. Y.) 52.

—(what is evidence of). 1 Mass. 242; 4 Halst. (N. J.) 45.

—(in a statute). 9 H. L. Cas. 193.

—(nullity of, by reason of insanity). 1 Hagg. Cons. 414.

—(when annulled for fraud). 5 Paige (N. Y.) 43.

—(valid in State where made, valid everywhere). 16 Mass. 157.

—(conditions against, are unlawful). 1 Atk. 361, 365.

—(unqualified restrictions on, are void). 5 Mass. 181.

—(a partial restraint of, is illegal). 9 East 170.

—(what is a contract in restraint of). 10 East 22.

—(action lies upon a parol promise of). 10 Ves. 429.

—(devise to be paid on the day of her). 1 Eq. Cas. Abr. 112.

MARRIAGE ARTICLES.—The heads or jottings of the provisions to be embodied in a marriage settlement; and they usually specify the several fortunes of the respective marrying parties which are to be brought into settlement. They should invariably be in writing and signed by the parties, in order to satisfy the

Statute of Frauds. In case of any variance between the settlement and the articles, the settlement will usually be rectified in accordance with the articles, unless it can be inferred from all the circumstances that the settlement was intended to express a new agreement of the parties. (Snell Eq. (5 edit.) 441-2.)—*Brown.*

MARRIAGE ARTICLES, (with female infant, invalid). 8 Wend. (N. Y.) 267.

—**MARRIAGE, BREACH OF PROMISE OF.**—*See BREACH, § 4.*

MARRIAGE, BREACH OF PROMISE OF, (in an action for an express promise need not be proved). 2 Stark. Ev. 942 *n.*

MARRIAGE-BROKAGE.—A marriage-brokage contract is an undertaking for reward to procure a marriage between two persons. Such a contract is void. Chit. Cont. 618. *See POLICY.*

MARRIAGE CONSIDERATION.

—The highest consideration recognized by law. A marriage consideration, in a settlement made prior to marriage, or in pursuance of articles entered into before marriage, runs through the whole settlement, as far as it relates to the husband and wife and issue, and protects them.

MARRIAGE CONTRACT, (what is). 4 Ind. 141.

MARRIAGE, IN CASE A. SHOULD DIE BEFORE, (in a will). 8 Petersd. Abr. 227.

MARRIAGE, LIMITATION IN RESTRAINT OF, (what is). 6 Mass. 169.

MARRIAGE PORTION.—The portion of one given in marriage.

MARRIAGE SETTLEMENT.—An arrangement made before marriage, and in consideration of it (the highest consideration known to the law), whereby a jointure is secured to the wife, and portions to children, in the event of the husband's death. If made after marriage, it will, as a general rule, be fraudulent and void against all persons who are creditors of the husband at the time of the settlement, unless such settlement contain a provision for debts, or is made in pursuance of articles made before marriage, or unless it be against a single debt, or the debt be secured by mortgage, in which case it would not affect the settlement,

for to do that it seems the party must be insolvent at the time. These settlements are of less importance in England than formerly owing to the operation of recent married women's acts, and are rare in the United States for the same reason.

MARRIAGE WITH CONSENT OF THE MOTHER, (in a will). Com. 748; 2 Vern. 223.

MARRIED, (in act of congress). 7 Wall. (U. S.) 496.

MARRIED MAN, (who is). 1 Oreg. 153.

MARRIED, WITHOUT BEING, (in a will). 7 Ves. 453, 458.

MARRIED WOMEN'S PROPERTY ACTS.—

§ 1. **In English law.**—The Statutes 33 and 34 Vict. c. 93, and 37 and 38 Vict. c. 50. They provide, in effect, that (1) the earnings of a married woman derived from her own exertions; (2) personal property coming to her during marriage, either (a) under an intestacy, or (b) under any deed or will (not exceeding in the latter case £200); and (3) the rents and profits of real estate descending upon her during marriage, shall belong to her, to her separate use; but in the case of property coming under (2) and (3) the rule only applies to women married after 9th August, 1870. Provision is also made for the registration of shares, stock, &c., in the name of a married woman so as to make them her separate property, and for actions being brought in her own name in respect of her separate property, (Griffith's Married Women's Property Act; *In re Voss*, 13 Ch. D. 501;) and as to the liability of her husband for her debts, &c., as to which see **MARRIAGE**, § 5; see also **SEPARATE ESTATE**; **SEPARATE USE**.

§ 2. **In American law.**—Statutes framed to protect the property rights of married women have been enacted, generally, throughout the United States; the first notable one being the New York Act of 1848, (Laws 1848, ch. 200,) followed in that State in 1860 and 1862 by further enactments having the same aim in view. (Laws 1860, ch. 90; Laws 1862, ch. 172.) These statutes have been very extensively copied and used as bases for similar laws in other States, more especially in those in which the common law doctrine of the merger of the wife's entity in that of the husband, has been found to be incompatible with the present condition of society. Many of these statutes, especially those of New York, are more advanced than the English Acts, i. e. they confer more rights, and abolish more wrongs upon married women than parliament has yet seen fit to do. Some States, how-

ever, among them New Jersey, cannot be said to have passed the English limit, or even to have reached it. A general review of these statutes being beyond the scope of this work, the reader is referred to the statute books of the several States.

MARROW.—The author of a famous book, written in the reign of Henry VII, and said to be still in manuscript, on the office of a justice of the peace—a work which has been quoted by later writers, such as Fitzherbert and Lambard, with great commendation, and seems to have been followed by them on the subject. 4 Reeves Hist. Eng. Law c. xxvii., 186.

MARRY, (devise to a wife if she does not). 3 Lev. 125.

— (in bigamy act). Wilberf. Stat. L. 186.

MARRY B., CONSENT TO, (in a devise). 4 Mod. 67, 69.

MARRY, IF SHE, (in a devise). 1 Mod. 272; 1 Wils. 135.

MARRY INTO THE FAMILIES OF A. OR B., (in a will). 1 Bro. Ch. 55.

MARRY, SHOULD SHE, DURING THE LIFETIME OF HER MOTHER, (in a will). Pr. Ch. 348.

MARRY WITH CONSENT OF A., (in a will). 1 Mod. 300, 302; 1 Sim. & S. 165, 304; 1 Wils. 159.

MARRY WITH CONSENT AND APPROBATION OF A., (in a will). Amb. 256, 259.

MARRY WITH CONSENT OF HER FATHER AND MOTHER, (in a devise). 9 Mod. 210, 211.

MARRY WITH CONSENT OF THEIR MOTHER, (in a will). Cas. t. Talb. 212.

MARRY WITHOUT A COMPETENT PORTION, (in a devise). 1 W. Bl. 630.

MARRY WITHOUT CONSENT OF A., (in a will). 2 Atk. 616, 620; 3 *Id.* 330, 334, 364, 368; 1 Mod. 86; 3 *Id.* 32; 1 P. Wms. 284; 2 *Id.* 547, 626, 628; Pr. Ch. 227, 562; 1 Vern. 20, 412; 2 *Id.* 333, 572, 580; 3 Ves. 89; 10 *Id.* 230; 19 *Id.* 14; 1 Wils. 59; 1 *Id.* 130.

MARRY WITHOUT MOTHER'S CONSENT, (in a will). 2 Vern. 357.

MARRYING, (a devise on condition of not, is void). Love. Wills 171.

MARSHAL.—

§ 1. **In American law**—A federal officer whose duty it is to execute the process of the courts of the United States. His functions within his particular district are very similar to those of a sheriff. See U. S. Rev. Stat. §§ 776-783, 943, 944.

§ 2. **In English law**—**Judge's marshal.**—In the practice of the Queen's Bench Division of the High Court, a marshal is an officer who attends each judge on circuit. He is the personal officer of the judge, as an aide-de-camp is of a general, and he performs the duties

of secretary. He is not a permanent officer, neither is he continuously employed. He has to swear the grand jury, and to make an abstract or note for the judge of the nature of the actions tried before him. Second Report of Legal Dep. Comm. (1874) 21.

§ 3. **Admiralty marshal.**—The marshal of the Probate, Divorce and Admiralty Division in admiralty matters is entrusted with the following duties: Execution of all warrants issued by the court; appraisal and sale of condemned ships and cargoes; removal of ships, *sub judice*, from port to port on removal being ordered; receipt and subsequent payment into court of all money arising out of execution of process; ascertaining the sufficiency or otherwise of bail, and the custody of embargoed ships. Second Report of Legal Dep. Comm. (1874) 89. See ACTION, § 12 *et seq.*, and the titles there referred to.

MARSHAL OF THE QUEEN'S BENCH.—An officer who had the custody of the queen's bench prison: The 5 and 6 Vict. c. 22 abolished this office, and substituted an officer called keeper of the queen's prison.

MARSHALING.—

§ 1. The act of arranging or of putting into proper order. In the distribution of assets, marshaling takes place where there are two claimants, A. and B., and two funds, X. and Y., both of which are available to satisfy A.'s claim, but only Y. is available for that of B., and A. is compelled to have recourse to the X. fund in order that the Y. fund may be left for B. Or, what is the same thing, if A. has been paid out of the Y. fund, B. is allowed to have recourse to the X. fund, against which he had originally no claim. (Wats. Comp. Eq. 36; 2 White & T. Lead. Cas. 66; Snell Eq. 281.) Thus, if a legacy is given to A. charged on real estate, and another not so charged is given to B., the personal estate not being sufficient to pay both, A. will be compelled to satisfy his legacy wholly or partially out of the real estate, so that B.'s legacy may be paid in full out of the personality. *Bligh v. Earl of Darnley*, 2 P. Wms. 619.

§ 2. **Charities.**—A testator is said to "marshal his own assets" in favor of a charity when he directs a legacy to a charity to be paid out of his pure personal estate, for the law does not marshal assets in favor of charities, and, therefore, with-

out such a direction, the legacy would abate in the proportion of the impure to the pure personality. *Robinson v. Geldert*, 3 Macn. & G. 735; Wats. Comp. Eq. 55. See ABATEMENT, § 4; MORTMAIN.

§ 3. **Mortgages.**—The doctrine of marshaling also applies to mortgages. Thus, if the owner of two estates mortgages them both to one person, A., and then one of them to another, B., without B. having notice of A.'s mortgage, B. may insist that A.'s debt shall be satisfied out of the other estate (the one not mortgaged to B.) so far as it will extend. 2 Fish. Mort. 704.

MARSHALING OF ASSETS.—See MARSHALING, §§ 1, 2.

MARSHALING OF SECURITIES.—See MARSHALING, § 3.

MARSHALSEA.—The Court of the Marshalsea had jurisdiction in actions of debt or torts, the cause of which arose within the verge of the royal court. It was abolished by Stat. 12 and 13 Vict. c. 101. 4 Steph. Com. 317 *n. id.*

MARSHALSEA PRISON. This prison, which was also styled the "Prison of the Marshalsea of Her Majesty's Household," was a prison for debtors, and for persons charged with contempt of the Queen's Court of the Marshalsea; the Court of the Queen's Palace of Westminster, commonly called the "Palace Court," and the High Court of Admiralty; and also for Admiralty prisoners under sentence of courts martial. By 5 Vict. c. 22, this prison and the Fleet and the Queen's Bench prisons were consolidated into one prison, called the "Queen's Prison." (4 Vict. c. 22; 6 Jur. 254.) - *Brown*.

MART.—A place of public traffic or sale.

MARTIAL LAW.—The law which is properly designated "martial law," consists of no settled code; but of the will and pleasure of the sovereign or military power of the State; for in the time of war, on account of the great necessity there is for guarding against dangers that often arise, and which require immediate attention, the military power is necessarily absolute. Nevertheless, martial law, in that sense, does not exist in time of peace (*Grant v. Gould*, 2 H. Bl. 69, 100); and the law of courts martial, sometimes called military and naval law, is to be distinguished from it, as that law which governs soldiers and sailors as such, in times of peace, and for the due administration of

which there are special courts military or courts naval provided. Yet so jealous of these jurisdictions was the common law of England that they had continuance for one year only, being annually reconstituted by the Mutiny and Marine Mutiny Acts, which were passed at the beginning of each session of parliament; and in the Army Discipline Act Commencement Act, 1879, (42 and 43 Vict. c. 32,) for putting in force the Army Discipline Act, 1879, (42 and 43 Vict. c. 33,) the like constitutional principle is preserved, a short commencement act being rendered necessary in every year. 42 and 43 Vict. c. 33, § 2.

MARTIAL LAW, (defined). 44 Ill. 142.
 (what is). 5 Blatchf. (U. S.) 319;
 21 Ind. 470.

MARTINMAS.—The feast of St. Martin of Tours, on the 11th of November; sometimes corrupted into "martilmas," or "martlemas." It is the third of the four cross quarter-days of the year.—*Wharton*.

MARTYRIA.—A figure by rhetoric, by which the speaker brings his own experience in proof of what he advances.

MASAGIUM.—A message.

MASCULINE.—Of the male sex. A statute frequently declares that words in it which import the masculine gender, shall be deemed to include females, unless there is something in the act inconsistent therewith; and by 13 and 14 Vict. c. 21, § 4, it is enacted that in all acts passed after the commencement of the next session, such words shall be deemed to include females, unless the contrary is expressly provided.

MASCULINE GENDER, (in a statute). 9 Geo. IV. c. 54, § 35.

MASK, DRESS OR OTHER TINGING, (in statute punishing escapes). Wilberf. Stat. L. 185.

MASTER.—A director; a governor; a teacher; one who has servants; the head of a college; the chief functionaries of courts of law.

MASTER AND APPRENTICE.—
 See APPRENTICESHIP; INDENTURE OF APPRENTICESHIP.

MASTER AND MARINERS, (does not include purser). 14 Hun (N. Y.) 100.

VOL. II.

MASTER AND SERVANT.—

§ 1. The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labor for an agreed period. (2 Steph. Com. 226.) The test of such a service seems to be, first, that the servant is bound to obey the reasonable commands of his master to do all acts falling within the scope of his employment, and, secondly, that the master has the power of dismissing the servant on his neglecting his duty, or for incompetence or gross misconduct, or on giving notice of dismissal in accordance with the express or implied terms of the contract. It would also seem that a material difference in social position is essential to the relation of master and servant, for tutors, clerks, governesses, opera singers, and the like, are not servants; and that the service must be exclusive, *i. e.* that the servant cannot work for any one else, without his master's permission, unless his service is limited to certain times or otherwise. The relationship between a master and a servant creates superiority and power on the one hand, and duty, subjection, and, as it were, allegiance on the other; Bac. Abr. tit. Master and Servant; *see, also*, Sm. Mast. & S. 106; Lumley v. Gye, 2 El. & B. 216; Bowen v. Hall, 6 Q. B. D. 333.

§ 2. Servants are generally divided into menial or domestic servants, laborers and workmen, and apprentices. The rules of law as to the respective rights and duties of the master and servant in the absence of express agreement vary to some extent according to the nature of the employment.

§ 3. **Rights and duties of strangers**.—As regard strangers, the relation of master and servant affects them chiefly in the following respects: The master may bring an action against any person for beating or maiming his servant, if he thus loses the services of his servant, and thereby suffers actual damages, (*see* SEDUCTION; SERVICE; TORT;) and the master has an action against any person who knowingly entices away a servant, or harbors and detains him after having been apprised of the former contract. (Sm. Mast. & S. 124; Underh. Torts 152.) This principle also

applies to contracts of service where the relation of master and servant does not strictly exist. (*Bowen v. Hall*, 6 Q. B. D. 333.) On the other hand, the servant is frequently the agent of his master for certain purposes, and accordingly has power to bind him by his acts, (*Sm. Mast. & S.* 219; see *AGENT*;) and if the servant in the course of his employment tortiously causes injury to any person, the master is liable. Therefore, if a servant in driving his master's carriage on his master's business injures a person by negligent driving, and not willfully, the master is liable in damages to that person, even although the servant may have gone out of his proper course for his own business or amusement; but if the servant takes the carriage out without his master's orders and for his own business or amusement, then the master is not liable for his negligence. *Joel v. Morrison*, 6 Car. & P. 501; *Sm. Mast. & S.* 271.

§ 4. **Master and Servant Acts.**—Under the Stats. 20 Geo. II. c. 19; 6 Geo. III. c. 25; 4 Geo. IV. c. 34; the Master and Servant Act, 1867; and the Employers and Workmen Act, 1875, justices of the peace have jurisdiction in many cases where questions arise as to the rights or liabilities of either party to a contract of service, and, under the last-mentioned act, county courts also have jurisdiction in some of those matters. *Sm. Mast. & S.* 446; see, also, Stats. 7 and 8 Vict. c. 101; 14 and 15 Vict. c. 11; and 24 and 25 Vict. c. 100, § 26, relating to apprentices. See *COUNCIL OF CONCILIATION; EMBEZZLEMENT; FACTORIES; FALSE CHARACTER.*

MASTER AT COMMON LAW.—

The title of officers of the English superior courts of common law appointed to record the proceedings of the court to which they belong; to superintend the issue of writs and the formal proceedings in an action; to receive and account for the fees charged on legal proceedings, and moneys paid into court. There are five to each court. They are appointed under Stat. 7 Will. IV. and 1 Vict. c. 30, passed in 1837. *Mozley & W.*

MASTER IN CHANCERY.—An officer of the Court of Chancery, whose duty it is to make inquiries (when so required by the court) into matters which the court cannot conveniently, without assistance, make for itself, and to report to the court his findings or conclusions with respect to such matters. The duties of the master are of a mixed character, being partly judicial and partly ministerial, the powers which he possesses in both respects

having been delegated to him by the court. Whenever a master has acted in obedience to the directions of the court, he informs the court, by a document in writing, of what he has done, or what conclusion he has come to; and in most cases this document is called the "master's report." In many jurisdictions the duties of this officer are now performed by clerks, commissioners, and referees.

MASTER OF A SHIP.—

§ 1. The person intrusted with the care and navigation of a ship, possessing what foreign jurists have called "exercitatorial power" over her. The master may delegate his power whenever it may be for the welfare of the ship and the accomplishment of the voyage.

§ 2. The master of a ship is the confidential servant or agent of the owners; and the owners are bound to the performance of all his contracts as to the usual employment of the ship. It follows that the owners must answer for a breach of contract, though committed by the master or mariners against their will, and without their fault. The owners, by selecting a person as master, hold him forth to the public as worthy of trust and confidence. And in order that this selection may be made with due care, and that all opportunities of fraud and collusion may be obviated, it is indispensable that they should be made responsible for his acts.

§ 3. The master may hypothecate or pledge both ship and cargo for necessary repairs in foreign ports during the voyage; but neither the ship nor cargo for repairs at home.

§ 4. The master has no lien upon the ship for his wages, nor for money advanced by him for stores or repairs.

§ 5. The master is bound to employ his whole time and attention in the service of his employers, and may not enter into any engagement that may occupy any portion of his time; and if he do so, and the price of such engagement happen to be paid to his owners, they may retain the money.

§ 6. During war, a master should be attentive to the regulations as to sailing under convoy; for besides his responsi-

bility to his owners or freighters, he may be prosecuted by the Court of Admiralty, and fined and imprisoned, if he willfully disobey the signals, instructions, or commands of the commander of the convoy, or desert it without leave.

§ 7. A penalty, in addition to the payment of the wages due, is imposed on every master of a vessel who having, on account of unfitness or inability to proceed on the voyage, left any seafaring men at any foreign port or place, shall neglect or refuse to deliver an account of the wages due to him, and to pay the same.

§ 8. The law makes no distinction between carriers by land and carriers by water. The master of a merchant ship (except where he confines the credit to the owner and excludes any liability on his own part) is, in the eye of the law, a carrier, and is as such bound to take care of the goods committed to his charge, and to convey them to the place of their destination, the act of God and the public enemy only being excepted. He would not, for example, be liable for damage done to goods on board in consequence of a leak in the ship occasioned by the violence of a tempest, or other accident; but if the leak were occasioned by rats he would be liable, for these might have been exterminated by ordinary care, as by putting cats on board, &c. So if the master run the ship in fair weather against a rock, or shallow, known to expert mariners, he is responsible. See 6 Com. B., n. s., 894; and Maud & P. Mer. Sh. (8 edit.) 111, 459. — *Wharton*.

MASTER OF THE CROWN OFFICE.—The queen's coroner and attorney in the criminal department of the Court of Queen's Bench, who prosecuted at the relation of some private person or common informer; the crown being the nominal prosecutor. (6 and 7 Vict. c. 20.) He is now an officer of the Supreme Court, see last title. The practice of the court (now the Queen's Bench Division of the High Court) on its crown side, is unaltered. Jud. Act, 1875, Ord. xlii. See CROWN OFFICE.

MASTER OF THE FACULTIES.—See FACULTY.

MASTER OF THE HORSE.—The third great officer of the royal household, being next to the lord steward and lord chamberlain. He has the privilege of making use of any horses, footmen, or pages, belonging to the royal stables.

MASTER OF THE MINT.—An officer who receives bullion for coinage, and pays for it, and superintends everything belonging to the mint. He is usually called the "warden of the mint." It is provided by the 33 Vict. 10, § 14, that the chancellor of the exchequer for the time being shall be the master of the mint.

MASTER OF THE ORDNANCE.—A great officer, to whose care all the royal ordnance and artillery were committed. (39 Eliz. c. 7.) But, see 18 and 19 Vict. c. 117.

MASTER OF THE ROLLS.—The office of master of the rolls is one of great antiquity and high rank. He was originally keeper of the records, and acted as assistant to the lord chancellor, like the other masters in chancery. (See MASTERS, § 3.) Subsequently, in the reign of Edward I., he acquired judicial authority in matters within the jurisdiction of the Court of Chancery, and in the reign of Henry VI., bills for relief were addressed to him as well as to the lord chancellor. In more modern times, any suit, petition, &c., could be heard in the first instance by the master of the rolls, as well as by the vice chancellors. (Spenc. Eq. 357; Hunt. Eq. 7; Haynes Eq. 47.) By the Judicature Act, 1873, the master of the rolls was made a member of the High Court of Justice (§ 4), and an *ex officio* member of the Court of Appeals (§ 6; see those titles), but he still retains his non-judicial duties as custodian of the records. He is the head of the petty bag office, and admits solicitors of the Supreme Court. (§ 87.) The Judicature Act, 1881, enacts that from the 27th August, 1881, the master of the rolls shall cease to be a judge of the High Court of Justice, but shall continue, by virtue of his office, to be a judge of the Court of Appeal. Every master of the rolls appointed after the passing of the act is to be under an obligation to go circuits. The act authorizes the appointment of a puisne judge of the High Court in place of the master of the rolls.

MASTER OF THE TEMPLE.—The chief ecclesiastical functionary of the Temple Church.

MASTERS.—Officers attached to the principal English courts of justice.

§ 1. Of Supreme Court.—The masters of the Supreme Court perform the duties formerly performed by the masters and associates of the Queen's Bench, Common Pleas and Exchequer Divisions, the queen's coroner and attorney, the master of the crown office, and the record and writ clerks. (Judicature (Officers) Act, 1879.) The duties of the masters of the Queen's Bench, Common Pleas and Exchequer Divisions, and of the crown office, were to attend in rotation the sittings of the divisions to which they were attached, hear summonses and applications in chambers, tax bills of costs, examine witnesses before trial, and report upon matters referred to them by the court. (Sm. Ac. 17; Second Rep. Leg. Dep. Comm. 15.) As to the duties of the associates, queen's coroner and record and writ clerks, see those titles. As to the distribution of business, see CENTRAL OFFICE.

§ 2. Masters of the Chancery Division.—In the Chancery Division of the High Court the masters tax bills of costs, (Second Rep. Leg. Dep. Comm. 54; *see* TAXATION;) the duties which, in the Queen's Bench Division, are performed by the masters, are, in the Chancery Division, performed by the chief clerks and registrars (*q. v.*)

§ 3. Originally the masters in chancery acted as assessors and assistants to the chancellor, who delegated to them many of his judicial duties; the most important being that of taking accounts and inquiries in suits, and reporting the result to the chancellor. (Spence Eq. 359 *et seq.*; Haynes Eq. 47.) The master of the rolls, who was one of them, afterwards acquired jurisdiction as a judge of first instance; the other masters were abolished in 1852, and their duties transferred to a new class of officers—the chief clerks (*q. v.*) Rep. Leg. Dep. Comm. 58.

MASTERS IN LUNACY.—Officers of the lord chancellor, as guardians of lunatics. Their duties are of two kinds: (1) to hold commissions or inquiries to find whether persons alleged to be insane are incapable of managing themselves and their affairs; (2) to inquire as to the property, relations, &c., of persons found lunatic, and to superintend the management and employment of the property for the benefit of the lunatic. Pope Lun. 30; 16 and 17 Vict. c. 70, § 6 *et seq.* *See* COMMISSION OF LUNACY; LUNACY; REPORT.

MASTERS IN LUNACY, (who are). 2 Steph. Com. 511-513.

MASTS, (distinguished from "logs"). 40 Me. 145.

MASURA.—In old records a decayed house; a wall; the ruins of a building; a certain quantity of land, about four oxgangs.

MATE.—The deputy of, or officer next in rank to, the master, in a merchant ship. There are sometimes one, sometimes two, three, or four, styled first, second, third, or fourth mate.

MATELOTAGE.—The hire of a ship or boat.

MATER-FAMILIAS.—In the civil law, the mother or mistress of a family. A chaste woman, married or single.—*Civil. Lex.*

MATERIAL—MATERIALITY.—The question whether an untrue representation or a concealment, avoids a contract to the subject-matter of which it relates, or whether an erasure or alteration avoids a written instrument, depends in general upon whether the misrepresentation, concealment, erasure or alteration is material; and the question whether it is material, depends partly on the facts of the case and partly on the nature of the transac-

tion. Thus, altering the date of a check, is a material alteration. (*Vance v. Lowther*, 1 Ex. D. 176; *Leake Cont.* 426; *Suffell v. Bank of England*, 7 Q. B. D. 270. *See* ALTERATION.) So, if during the negotiation of a marine insurance, a statement is made which has no real bearing on the risk, but which, nevertheless, influences the mind of the underwriter, as, for instance, an assertion that previous insurances have been obtained on the same ship at a low premium, the misrepresentation will avoid the policy. (*Maude & P. Mer. Sh.* 397, 401.) So, also, the question whether false testimony amounts to perjury, depends upon whether such testimony was material to the issue upon the trial of which it was given. *See* PERJURY; UBERRIMÆ FIDEL.

MATERIAL, (in the code). 4 Sandf. (N. Y.) 668.

MATERIAL ALTERATION, (defined). 10 Am. Dec. 269 *n.*

MATERIAL DEFENDANT, (in a statute). 54 Ala. 440.

MATERIAL FACTS, (how pleaded). (*Could* Pl. 63, 64.

MATERIAL ISSUE, (what is). 6 How. (N. Y.) Pr. 145, 151.

MATERIAL MEN.—Persons who furnish lumber or any other material to be used in the construction or building of ships, houses or other buildings. They are generally entitled to a lien upon the vessel (if a foreign one), which may be enforced in admiralty, and upon the building in question, under the mechanics' lien laws (*q. v.*)

MATERIAL REPRESENTATIONS, (what are not, in effecting insurance). 3 Wheel. Am. C. L. 204.

MATERIALITY.—*See* MATERIAL.

MATERIALS, (defined). 71 Pa. St. 293.

MATERIALS FOR BUILDING, (what are not). 38 Wis. 29.

MATERIALS, WORK, LABOR AND, (in a declaration). 3 Campb. 37.

MATERNAL.—*See* DESCENT, § 12.

MATERTERA.—A maternal aunt; the sister of one's mother.

MATERTERA MAGNA.—A great maternal aunt.

MATH.—A mowing.

MATRICIDE.—(1) The murder of a mother; (2) one who has slain his mother.

MATRICULA.—(1) A register of the admission of officers and persons entered into any body or society, whereof a list is made. Hence, those who are admitted into universities are said to be "matriculated"; (2) a kind of almshouse, which had revenues appropriated to it, and was usually built near the church, whence the name was given to the church itself.—*Encycl. Lond.*

MATRICULATE.—To enter a university.

Matrimonia debent esse libera (Halkerton 86): Marriages ought to be free.

MATRIMONIAL CAUSES.—These causes, in English law, include suits for divorce, nullity of marriage, judicial separation, damages for adultery, restitution of conjugal rights, and suits of jactitation of marriage. See the various titles; also **ALIMONY**; **PROBATE, DIVORCE AND ADMIRALTY DIVISION**.

MATRIMONIUM.—(1) Marriage; (2) the inheritance descending to a man *ex parte matris*. See **DESCENT**, § 12.

Matrimonium subsequens tollit peccatum præcedens (Jur. Civ.): Subsequent marriage cures preceding criminality.

MATRIMONY.—Marriage; the nuptial state; the contract of man and wife. See **HUSBAND AND WIFE**; **MARRIAGE**.

MATRIMONY, (who cannot contract). 12 Mass. 363.

MATRINA.—A godmother.

MATRIX ECCLESIA.—The mother church, *i. e.* the cathedral, so called in relation to the parochial churches within the same diocese, or a parochial church in relation to chapels depending on it. Leg. Hen. I. c. 19.

MATRON.—A married woman; a mother of a family. See **JURY**, § 10.

MATTER DEPENDING IN THE COURT, (in a statute). 7 Dowl. & Ry. 382.

MATTER IN CONTROVERSY, (what is). 1 Serg. & R. (Pa.) 289; 2 Munf. (Va.) 542.

MATTER IN CONTROVERSY BETWEEN THE SAME PARTIES, (what is). 4 Serg. & R. (Pa.) 79.

MATTER IN DEED.—Some private matter or thing contained in a deed between two or more parties; as the covenants or recitals in a lease; and these, although recorded, do not thereby become matter of record, but are simply deeds recorded or enrolled and there is a mate-

rial difference between a matter of record and some matter recorded for the purpose of custody only—a record being an entry of judicial matters or proceedings which have taken place in a court of record, and of which the court takes judicial notice, as matter coming peculiarly under its own cognizance, whereas the enrollment of a deed is a private act of the parties concerned, of which the court takes no cognizance at the time when it is done. This phrase is also equivalent to "matter of fact" (*q. v.*)

MATTER IN DEMAND, (in a statute). 44 Conn. 188.

MATTER IN DISPUTE, (what is). 3 Cranch (U. S.) 159; 2 La. Ann. 793, 911; 7 Id. 109; 10 Id. 170; 12 Id. 87.

— (in a statute). 3 Dall. (U. S.) 404; 1 Wall. (U. S.) 337.

— (in act of congress). 2 Yeates (Pa.) 276.

— (in California constitution). 13 Cal. 28.

— (in submission to arbitration). 1 Wheel. Am. C. L. 427; 2 T. R. 645.

MATTER IN DIFFERENCE, (in submission to arbitration). 1 Wash. (Va.) 305, 306; 8 East 445; 11 Id. 193.

— (in an award). 4 T. R. 146.

Matter in ley ne serra mise in boutche del jurors (Jenk. Cent. 180): Matter of law shall not be put into the mouth of the jurors.

MATTER IN PAIS.—Matter of fact, probably so called because matters of fact are triable by the country, *i. e.* by a jury.

MATTER OF FACT.—That which is to be ascertained by the senses, or by the testimony of witnesses describing what they have perceived. The decision of such matters is the province of the jury.

MATTER OF LAW.—That which is to be ascertained by reasoning from the established rules of law, or from the enactments of the legislature. The court is to determine matters of law.

MATTER OF LAW, (defined). Gould Pl. 347 n. — (what is). 70 N. C. 167.

MATTER OF RECORD.—Some judicial matter or proceeding entered upon one of the records of the court, and of which the court takes peculiar cognizance. Thus, the judgments in actions in the courts of record, being matter which is entered upon the records of the court

and filed with its officer, are thence termed matters of record.—*Brown*.

MATTER TO BE CHARGED, (in an information for libel). Cowp. 688.

MATTERS AND PROCEEDINGS IN BANKRUPTCY, (in United States constitution). 72 N. Y. 159, 167.

MATTERS OF SUBSISTENCE FOR MAN OR BEAST, (in a statute). 19 Gratt. (Va.) 813, 819.

MATURE CAUSE OF ACTION, (means suable). 82 N. Y. 18.

MATURED, (in a statute). 59 Ind. 341.

Maturiora sunt vota mulierum quam virorum (6 Co. 71): The desires of women are more mature than those of men.

MATURITY.—The time when a bill of exchange or promissory note becomes due.

MATURITY, (in a promissory note). 26 La. Ann. 436.

— (when means "puberty"). 6 Call (Va.) 55.

— (not synonymous with "legal majority"). 2 Beas. (N. J.) 375.

— (when used in reference to a bond). 1 Otto (U. S.) 72.

MAUNDY THURSDAY.—The day preceding Good Friday, on which princes give alms.

MAXIM.—An axiom; a general principle; a leading truth; so called, says Coke, *quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur*. 1 Inst. 11.

Maxime paci sunt contraria vis et injuria (Co. Litt. 161): Force and injury are chiefly contrary to peace.

Maximus erroris populus magister (Bacon): The people is the greatest master of error.

MAY.—This word in a statute is to be construed "must," or "shall," whenever it can be seen that the legislative intent was to impose a duty, and not simply a privilege or discretionary power; and the same rule prevails where third persons or the public have a right *de jure* that the power conferred shall be exercised. In deeds and other private writings, the construction of the word depends upon the circumstances of each particular case.

MAY, (in a statute, when imperative). 9 How. (U. S.) 248, 259; 22 *Id.* 422; 1 Pet. (U. S.) 46; 4 Wall. (U. S.) 435; 5 *Id.* 705; 28 Ala. 28; 9 Port. (Ala.) 390; 45 Cal. 696; 44 Conn. 534; 13 Ill. 3; 68 *Id.* 144; 70 *Id.* 587;

77 *Id.* 271; 84 *Id.* 471, 476; 7 Ind. 122; 18 *Id.* 27; 61 Me. 566; 16 Gray (Mass.) 168; 110 Mass. 238, 239; 111 *Id.* 407; 125 *Id.* 198, 201; 11 Minn. 92, 101; 48 Mo. 167; 8 Neb. 224; 4 *Id.* 150; 11 Nev. 260; 39 N. H. 435; 2 Harr. (N. J.) 171; South. (N. J.) 357, 358; 11 Abb. (N. Y.) Pr. 90, 93; 51 Barb. (N. Y.) 270; 1 Den. (N. Y.) 457; 12 How. (N. Y.) Pr. 224, 231; 17 Hun (N. Y.) 142; 25 *Id.* 17; 3 Laus. (N. Y.) 160; 51 N. Y. 401, 406; 72 *Id.* 583, 586; 11 Wend. (N. Y.) 159; 14 *Id.* 647; 3 Serg. & R. (Pa.) 151; 14 *Id.* 429; 36 Wis. 498; 15 Am. Dec. 464, 467 *n.*; 9 East 394; 2 Salk. 609; 5 T. R. 538; 1 Vern. 153 *n.*; 5 Com. Dig. 330; Wilberf. Stat. L. 196, 197, 199, 204.

MAY, (in a statute, when permissive only). 1 Pet. (U. S.) 46, 64; 71 Mo. 29; 107 Mass. 191, 197; 39 Mo. 521; 3 Dutch. (N. J.) 407; 50 Barb. (N. Y.) 339, 340; 5 Cow. (N. Y.) 188, 192; 1 Duer (N. Y.) 599, 600; 10 How. (N. Y.) Pr. 237; 5 Johns. (N. Y.) Ch. 101, 113; 24 N. Y. 405; 23 Wend. (N. Y.) 156; 9 Wis. 309.

MAY ADVANCE, (in a memorandum). 2 Mont. D. & DeCt. 537.

MAY BE MADE, (in a lease). 6 Wend. (N. Y.) 532.

MAY CONTRACT, (in an agreement). 2 Campb. 413.

MAY EXEMPT, (in a statute). 1 L. R. 8 Q. B. 481.

MAY GIVE, (in a devise). 10 Mod. 401.

MAY HAVE, (in a will). 1 Ves. & B. 422.

MAY IN ANY WISE, (not always synonymous with "may by any possibility," or "may under any circumstances"). 6 Halst. (N. J.) 62.

MAY PAY, (equivalent to "liable to pay"). 83 Pa. St. 397.

— (in a will). 2 Vern. 559.

MAY RECEIVE, (in an agreement). 41 Conn. 470.

MAYHEM.—

§ 1. This crime consists in violently depriving another of the use of a member proper for his defense in fight, such as an arm, a leg, an eye, &c. (3 Bl. Com. 121; Co. Litt. 126a, 288a.) It was originally both a civil injury and a criminal offense, but by modern statutes the law relating to felonious maiming and wounding has been amended, so that there is no legal difference between depriving a person of a member proper for his defense in fight and causing him any other grievous bodily harm (*see* MALICIOUS INJURIES TO THE PERSON), except that every one has a right to consent to the infliction upon himself of any bodily harm not amounting to a mayhem. Steph. Cr. Dig. 129.

§ 2. Mayhem, as a civil injury, seems still to exist, but the use of the word is rare. *See* APPEAL, § 8.

MAYHEM, (defined). 7 Mass. 247; 1 Chit. Gen. Pr. 38.

MAYHEM, (what constitutes). 7 Pac. C. L. J. 640.

—— (what is not). 8 Port. (Ala.) 472.

MAYOR.—The chief executive officer of a city. See **MUNICIPAL CORPORATION**.

MAYOR, (defined). 12 Ind. 569.

—— (in a statute). 3 Yeates (Pa.) 426.

MAYOR'S COURT.—The name of a court usually established in cities, composed of a mayor, recorder, and aldermen, generally having jurisdiction of offenses committed within the city, and of other matters specially given them by the statute.—*Bouvier*.

MAYOR'S COURT OF LONDON.—

§ 1. An inferior court having jurisdiction in civil cases where the whole cause of action arises within the city of London; if, however, the debt or damage claimed in an action does not exceed £50, the court has jurisdiction, provided that the defendant dwelt or carried on business within the city at the time the action was brought, or within six months previously, or that part of the cause of action arose within the city. (Stat. 20 and 21 Vict. c. clvii., § 12; *Mayor of London v. Cox*, L. R. 2 H. L. 239; *Hawes v. Pavely*, 1 C. P. D. 418.) Actions of ejectment, and actions under the Bills of Exchange Act, may be brought in the court, and also certain proceedings peculiar to the city. *Cand. M. C. Pr.* 69, 121; *Yeatm. M. C. Pr.* xxxix., iii.

§ 2. The court has two "sides" or divisions—a legal and an equitable—but of late years the equitable jurisdiction has almost fallen into disuse. *Yeatm. M. C. Pr.* ii.

§ 3. An ordinary action is commenced by the plaintiff entering at the office of the registrar of the court what is called "an action," which is in the nature of a *præcipe* (*q. v.*), giving the names of the parties and the nature of the claim; a copy of this action, together with a notice to the defendant to appear to the action, and particulars of the claim, is then issued and served on the defendant; this document is sometimes called a "copy action and notice," but more commonly a "plaint." (See *Cand. M. C. Pr.* 71; *Yeatm. M. C. Pr.* 66.) The subsequent proceedings are similar to those in actions at law before the Judicature Acts, 1873 and 1875, as to which, see **CONGESSIT SOLVERE**; **PLEADING**; **POSTEA**; **RECORD**.

§ 4. Suits on the equitable side of the court follow the practice of the Court of Chancery, (*Id.* xix.); as to which, see **DECREET**, § 1; **PLEADING**. As to the procedure in foreign attachment, see that title. The judge of the court is the recorder, or, in his absence, the common serjeant. Section 43 of the act. See **CITY OF LONDON COURT**.

MAYORALTY.—The office of a mayor.

MAYORESS.—The wife of a mayor.

MEAD, or **MEADOW**.—Ground somewhat watery, not ploughed, but covered with grass and flowers.—*Encycl. Lond.*

MEADOW, (a sedge-flat is not). 34 Conn. 429. — (will pass under the word "land"). 4 Bing. 90.

—— (in a covenant). 8 Mod. 311, 312.

MEAL-RENT.—A rent formerly paid in meal.

MEAN, or **MESNE**.—A middle between two extremes, whether applied to persons, things, or time. See **MESNE**.

MEANDER.—To follow a winding or flexuous course. A term used in the Western States to designate the survey of a stream of water according to its actual course. 2 Wis. 317.

MEANING, (in an indictment). *Stark. Cr. Pl.* 129.

MEANS, (synonymous with "acts"). 1 Barn. & C. 457, 459.

—— (in a covenant). 2 Dowl. & Ry. 665. **MEANS, BY ANY OTHER**, (in a statute). 29 Mich. 50.

MEANS OF SUPPORT, (in civil damage law). 71 Ill. 241; 74 N. Y. 526.

MEANS OF SUPPORTING A FAMILY, (in a statute). 5 Watts (Pa.) 337.

MEANTIME, IN THE, (in a will). 3 Atk. 43; 5 Ves. 388, 393; 8 *Id.* 227, 239.

MEASE, or **MESE**.—Norman-French for a house. *Litt.* §§ 74, 251.

MEASON-DUE.—A house of God; a monastery; religious house or hospital. See *Stat.* 39 Eliz. c. 5.

MEASURE.—That by which the quantity of anything is ascertained; the rule by which anything is adjusted or proportioned.

MEASURE OF DAMAGES.—See **DAMAGES**, § 1.

MEASURE OF VALUE.—In the ordinary sense of the word, measure would mean something by comparison with which we may ascertain what is the value of anything. When we consider further, that value itself is relative, and that two things are necessary to constitute it, independently of the third thing, which is to measure it, we may define a measure of value to be something by comparing with which any two other things, we may infer their value in relation to one another. 2 Mill Pol. Ec. 101.

MEASURED, (distinguished from "estimated"). 1 Ves. & B. 377.

MEASURED JUSTLY, (in a declaration). Cro. Jac. 391.

MEASURED, TO BE, (in a covenant). Cro. Jac. 472.

MEASURER, or METER.—An officer in the city of London, who measured woolen clothes, coals, &c. See **ALNAGER**.

MEASURING MONEY.—A duty which some persons exacted by letters-patent, for every piece of cloth made, besides alnage. It is abolished.—*Wharton*.

MEAT AND DRINK, (in a covenant). 1 Day (Conn.) 30.

MECHANIC, (defined). 32 Ark. 433.

MECHANIC'S LIEN.—A species of remedy allowed by the statute laws of most of the States to persons furnishing materials or labor towards the construction of a building, whereby, in proper cases, payment of their demands may be enforced out of the realty.—*Abbott*.

MEDALS, (in a will). 3 Atk. 202.

MEDDLE, (covenant not to, with real estate). Reeve Dom. Rel. 181.

MEDERIA.—In old records, a house or place where meiheglin, or mead, was made.

MEDFEE.—A reward; a bribe; that which is given to boot.—*Cowell*.

MEDIÆ ET INFIRMÆ MANUS HOMINES.—Men of a middle and base condition.—*Blount*.

MEDIANUS HOMO.—A man of middle fortune.

MEDIATE TESTIMONY.—Secondary evidence (*q. v.*)

MEDIATION.—The act of bringing or persuading two contending parties to agree, compromise, or settle their differences; arbitration (*q. v.*) seems to express a similar idea. The word is also used in a diplomatic sense, to describe a sort of intervention by one nation in the affairs of others—with a view, by the exercise of the "good offices" of the mediating state, to restore peace and good order. See **INTERVENTION**.

MEDIATOR.—One who interposes between parties at variance, with their consent, for the purpose of reconciling them.

MEDIATORS OF QUESTIONS.—Six persons authorized by statute, who, upon

any question arising among merchants, relating to unmerchantable wool, or undue packing, &c., might, before the mayor and officers of the staple, upon their oath, certify and settle the same; to whose order and determination therein the parties concerned were to give entire credence, and to submit. Stat. 27 Edw. III. st. 2, c. 24.

MEDICAL EVIDENCE.—Testimony given by physicians or surgeons in their professional capacity as experts, or derived from the statements of writers of medical or surgical works.—*Bowyer*.

MEDICAL JURISPRUDENCE.—See **FORENSIC MEDICINE**.

MEDICAL PRACTITIONER.—See **PHYSICIAN**.

MEDICAL SERVICES, (what are). 59 Me. 181.
MEDICINE, (in pharmacy act). L. R. 5 Q. B. 296.

MEDICO-LEGAL.—Relating to the law concerning medical questions.

MEDIETATIS LINGUÆ.—See **JURY**, § 9.

MEDIO ACQUIETANDO.—A judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him. Reg. Jur. 129.

MEDITATIO FUGÆ.—A debtor in *meditatione fugæ* (meditating flight) may, by the law of Scotland, be arrested by warrant obtained for that purpose.

MEDIUM TEMPUS.—Mean time; mesne profits.—*Cowell*.

MEDLEFE — MEDLETA — MEDLETUM.—A sudden scolding at and beating one another. Bract. 1, 3, c. xxxv.

MED-SOEAT.—A bribe; hush money.—*Anc. Inst. Eng.*

MEDSYPP.—A harvest supper or entertainment given to laborers at harvest-home.—*Cowell*.

METT, (in revised statutes, ch. 51, § 11). 10 Cush. (Mass.) 499.

MEETING.—

§ 1. Of creditors.—In the law of bankruptcy and insolvency (including proceedings for liquidation and composition), the most important kind of meeting is the first meeting of creditors, which is described under the titles **BANKRUPTCY**; **COMPOSITION**; **LIQUIDATION**. The trustee in a

bankruptcy or liquidation, in England, is bound to follow the directions of the creditors in administering the estate, and he may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes; in certain cases he is required to do so. (Robts. Bankr. 519.) A member of the committee of inspection or the registrar of the court may also summon a general meeting, *e. g.* for the purpose of removing the trustee or appointing a new trustee.

§ 2. **Corporation, Ordinary—Extraordinary.**—In the law of corporations meetings are of two kinds, ordinary and extraordinary, or, as they are also called, general and special. Ordinary or general meetings are usually held at stated times and for the transaction of business generally. Extraordinary or special meetings are held as occasion may require for the transaction of some particular business, which ought to be specified in the notice convening the meeting. One meeting may be both ordinary and extraordinary. (Lind. Comp. 572.) Every company formed under the English Companies Act, 1862, is bound to hold a general meeting within four months after its registration, (Companies Act, 1867, § 89,) and once at least in every year thereafter. (Companies Act, 1862, § 49.) It has been decided that a single person cannot constitute a meeting. *Sharp v. Dawes*, 2 Q. B. D. 26. See **RESOLUTION**.

MEETING, (in stannaries act). 2 Q. B. D. 26, 29.

MEETING OF THE QUALIFIED VOTERS, (in an indictment). 122 Mass. 12.

MEGBOTE.—In Saxon law, a recompense for the murder of a relation.

MEIGNE, or MAISNADER.—A family.

MEINY, MEINE, or MEINIE.—The royal household; a retinue.

MELANCHOLIA.—The ancient term for "monomania" (*q. v.*)

MELDFEOH.—The recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the promoter's (*i. e.* informer's) fee.

Melieur serra prize pour le roy (Jenk. Cent. 192): The best shall be taken for the king.

MELIOR—MELIUS.—Better; the better.

Melior dabit nomen rei (Bac.): The better will give a name to a thing.

Melior est conditio defendentis.—The condition of the party in possession is the better one, *i. e.* where the right of the parties is equal.

Melior est conditio possidentis, et rei quam actoris (4 Inst. 180): The condition of the possessor is the better, and the condition of the defendant than that of the plaintiff.

Melior est conditio possidentis ubi neuter jus habet (Jenk. Cent. 118): The condition of the possessor is the better where neither of the two has a right.

Melior est justitia vere præveniens, quam severe puniens (3 Inst. Epil.): Justice truly preventing is better than severely punishing.

MELIORATING WASTE.—See **WASTE**.

MELIORATIONS.—In the Scotch law, improvements.

Meliorem conditionem ecclesiæ suæ facere potest prælatus, deteriorem nequaquam (Co. Litt. 101): A bishop can make the condition of his own church better, but by no means worse.

Meliorem conditionem suam facere potest minor, deteriorem nequaquam (Co. Litt. 337): A minor can make his own condition better, but by no means worse.

Melius est in tempore occurrere, quam post causam vulneratum remedium querere (2 Inst. 299): It is better to meet a thing in time, than after an injury inflicted, to seek a remedy.

Melius est omnia mala pati quam malo consentire (3 Inst. 23): It is better to suffer every ill than to consent to ill.

Melius est recurrere quam male currere (4 Inst. 176): It is better to run back than to run badly; it is better to retrace one's steps, than to proceed improperly.

Melius est petere fontes quam sectari rivulos: It is better to go to the fountain head than to follow little streamlets.

MELIUS INQUIRENDUM.—If an office or other inquisition is found against the crown, a *melius inquirendum*, *i. e.* a further (literally "better") inquiry under the former commission may be awarded for the crown. But no *melius inquirendum* is usually awarded in such case unless some *prima facie* ground is shown for supposing the inquisition to be wrong. A *melius inquirendum* may also be awarded if the former

inquisition is on the face of it incomplete or uncertain. *Chit. Prer.* 258; *Co. Litt.* 77 b. *See* INQUEST OF OFFICE; INQUISITION.

MEMBER.—(1) A limb of the body capable of use in self-defense. (2) One who belongs to a partnership, company, or corporation. (3) One who belongs to a legislative or judicial body; as, a member of congress, a member of the court, &c.

MEMBER, (in a statute). 1 *Mass.* 392.
 — (of a corporation, who is). 16 *Mass.* 94, 100; 4 *Pick.* (Mass.) 405.
 — (of a corporation, distinguished from "stockholder"). 1 *Whart.* (Pa.) 461, 468.
 — (of a corporation, liability of). 17 *Mass.* 330.

MEMBER OF CONGRESS.—A member of the senate or house of representatives of the United States. *See* CONGRESS.

MEMBER OF PARLIAMENT.—One having the right to sit in either house of parliament. *See* HOUSE OF COMMONS; HOUSE OF LORDS.

MEMBERS.—Places where anciently a custom house was kept, with officers or deputies in attendance. They were lawful places of exportation or importation. 1 *Beaw. Lex. Mer.* (6 edit.) 246.

MEMBERS, (synonymous with "stockholders," in insurance law of 1853). 78 *N. Y.* 114.

MEMBERS BEING COMMUNICANTS, (in charter of religious congregation). 11 *Serg. & R.* (Pa.) 39.

MEMBRANA.—Parchment; a skin of parchment. *Hale Hist. Com. L.* 17.

MEMBRUM.—A slip or small piece of land.

MEMORANDUM.—Be it remembered. (1) Anciently the initial word of the record in the Court of King's Bench, when legal documents were written in Latin. (2) An informal writing intended to evidence some fact or agreement, formerly commenced with this word, and the translation is still used, both in such writings and in court records.

MEMORANDUM, (defined). 32 *Conn.* 517.
 — (what is). 117 *Mass.* 18; 6 *Barn. & C.* 117, 121; 1 *Ring.* 8; 2 *Bos. & P.* 238; 1 *Wils.* 118; 2 *Mau. & Sel.* 280; 2 *Moo. & P.* 375.
 — (what is not). 9 *Barn. & C.* 706; 3 *Car. & P.* 296.
 — (in policy of insurance). 2 *Selw. N.* P. 948.
 — (on a promissory note). 10 *Pick.* (Mass.) 228.

MEMORANDUM, (under statute of frauds). 57 *Ala.* 258; 7 *Mass.* 233; 13 *Id.* 87; 17 *Id.* 131; 3 *Johns.* (N. Y.) 399, 419; 12 *Id.* 102; 14 *Id.* 484; 3 *Wend.* (N. Y.) 386; 16 *Id.* 81; 24 *Id.* 322; 2 *Barn. & C.* 945, 948; 6 *East* 307; 7 *Id.* 558, 567; 15 *Id.* 108.

MEMORANDUM ARTICLES.—Articles enumerated in the "memorandum clause" (*q. v.*) in a marine policy of insurance.

MEMORANDUM CHECK.—A check often given by a merchant obtaining a temporary loan from another, in the place of giving a promissory note, and intended not to be presented at the bank for payment, but to be redeemed by the maker at a time agreed upon. Such understanding is denoted by the word *mem.* written upon the check. But the making of a check in this way does not affect its negotiability, or alter the right of the holder to present it to the bank and demand payment immediately. 11 *Paige* (N. Y.) 612.

MEMORANDUM CHECK, (what is). 12 *Abb.* (N. Y.) *Pr. N. S.* 200.

MEMORANDUM CLAUSE.—In a policy of marine insurance the memorandum clause is a clause inserted to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature, and for minor damages. It begins as follows: "N. B.—Corn, fish, salt, fruit, flour and seed are warranted free from average, unless general or the ship be stranded;" meaning that the underwriters are not to be liable for damage to these articles caused by sea-water or the like. (*Maud & P. Mar. Sh.* 371.) *See* AVERAGE; GENERAL AVERAGE; POLICY OF INSURANCE.

MEMORANDUM OF AGREEMENT.—*See* STATUTE OF FRAUDS.

MEMORANDUM OF ALTERATION.—Formerly, in England, where a patent was granted for two inventions, one of which was not new or not useful, the whole patent was bad, and the same rule applied when a material part of a patent for a single invention had either of those defects. To remedy this the Stat. 5 and 6 Will. 4, c. 83, empowers a patentee (with the fiat of the attorney-general) to enter a disclaimer (*q. v.*) or a memorandum of an alteration in the title or specification of the patent, not being of such a nature as to extend the exclusive right granted by the patent, and thereupon the memorandum is deemed to be part of

the letters-patent or the specification. Johns. Pat. 151; Stat. 15 and 16 Vict. c. 83, § 39.

MEMORANDUM OF ASSOCIATION.—A document by the registration of which a company is formed under the English Companies Act, 1862. It specifies the name of the proposed company, the part of the United Kingdom in which the registered office of the company is to be, and the objects for which the company is established. (Companies Act, 1862, § 10.) If the company is to be limited by shares, the memorandum must also contain the amount of the capital and the number of shares. (§ 8. As to companies limited by guarantee, see § 9.) The memorandum must be signed by seven persons at least (§§ 6, 11), who are called the "subscribers." It cannot be altered, except that a company limited by shares may increase its capital or alter the division of its capital into shares, &c. See ARTICLES OF ASSOCIATION; COMPANIES ACTS; REDUCTION OF CAPITAL.

MEMORANDUM OF ASSOCIATION, (what is). 3 Steph. Com. 20.

MEMORANDUM IN ERROR.—A document alleging error in fact, accompanied by an affidavit of such matter of fact. Stat. 15 and 16 Vict. c. 76, § 158. See ERROR.

MEMORIAL.—

§ 1. **Land registries.**—In the land registries of Middlesex, York, &c., which are registries of deeds and not of titles, the registration of a deed or other document is effected by leaving it at the registry together with a memorial under the hand and seal of one of the parties to the deed. The memorial is an abstract of the material parts of the deed, with the parcels (*q. v.*) at full length, and concludes with a statement that the party desires the deed to be registered. The execution of the deed and memorial is proved by the oath of an attesting witness. See LAND REGISTRY.

§ 2. **Petition.**—"Memorial" also signifies a petition or statement submitted to a person or body.

MEMORIAL, (is a record). 32 Conn. 517.

MEMORY.—(1) Understanding; mental capacity either to make contracts or to commit a crime, so far as intention is necessary. (2) The reputation, good or bad, which a man leaves at his death.—*Bouquier.*

MEMORY, LEGAL, (what is). Co. Litt. 115a.

MEMORY, TIME OF.—In the old books, when a person alleges in legal proceedings, that a custom or prescription has existed from time whereof the memory of man runneth not to the contrary, that is as much as to say that no man then alive hath heard any proof of the contrary.

This is also called "time of living memory," as opposed to "time of legal memory," which runs from the reign of Richard I., because the Statute of Westminster I (3 Edw. I. c. 8) fixed that period as the time of limitation for bringing certain real actions. (Litt. § 170. See LIMITATION, § 6.) As to the practical importance of the distinction, see ANCIENT MESSUAGES; CUSTOM, § 5; LOST GRANT; PRESCRIPTION.

MEMORY, TIME OF, (commences when). 8 Pick. (Mass.) 504; 3 Halst. (N. J.) 125.

MEN OF LEGAL ATTAINMENTS, (in a statute). 4 Ind. 7.

MEN OF STRAW.—Men who used in former days to ply about courts of law, so called from their manner of making known their occupation (*i. e.* by a straw in one of their shoes), recognized by the name of *straw-shoes*. An advocate or lawyer who wanted a convenient witness, knew by these signs where to find one, and the colloquy between the parties was brief. "Don't you remember?" said the advocate (the party looked at the fee, and gave no sign; but the fee increased, and the powers of memory increased with it)—"To be sure I do." "Then come into court and swear it!" And straw-shoes went into court and swore it. Athens abounded in straw-shoes. Quart. Rev. xxxiii. 344.

MENACE.—A threat. By 24 and 25 Vict. c. 96, § 45, it is made felony to demand with menaces property, money, &c., with intent to steal; similar statutes are in force in most of the States. See THREATS.

MENAGIUM.—A family.

MENDLEFE.—See MEDLEFE.

MENIALS.—Those servants who live within their master's walls.—*Termes de la Ley.* See DOMESTICS.

MENS.—Mind; intention; meaning; understanding; will.

Mens testatoris in testamentis spectanda est (Jenk. Cent. 277): The intention of the testator is to be regarded in wills.

MENSA.—(1) Patrimony, or goods, and necessary things for livelihood.—*Jacob.* (2) A table; the table of a money changer. D. 2, 14, 47.

MENSA ET THORO.—See DIVORCE; LIMITED DIVORCE; SEPARATION.

MENSALIA.—Parsonages or spiritual livings united to the tables of religious houses, and called *mensal benefices* amongst the canonists.—*Cowell.*

MENSULARIUS.—In the civil law, a money-changer. D. 2, 14, 47, 1.

MENSURA.—In old English law, a measure.

MENSURA DOMINI REGIS, or MENSURA REGALIS.—The royal standard measure, which was kept in the exchequer, according to which all measures were to be made.

MENTAL ALIENATION.—Insanity (*q. v.*)

§ 1. "Many attempts have been made by psychologists to define insanity; but the definitions hitherto given are so imperfect that it would be difficult to find one which includes all who are insane and excludes all who are sane . . . These definitions are defective, inasmuch as they are not adapted to the various forms of the disease." 2 Tayl. Med. Jur. (2 edit.) 476.

§ 2. *The different species.*—The subject was thus classified by Esquirol, at least, in its main features: (1) *Mania*, a hallucination which extends to all kinds of objects, accompanied with excitement. (2) *Monomania*, confined to a single or a small number of objects. (3) *Dementia*, an incapacity of reasoning in consequence of functional disorder of the brain, not congenital. It appears under two different degrees of severity, which are designated as "acute" and "chronic." (4) *Idiotism*, congenital, from original mal-conformation in the organ of thought. The most striking physical trait of idiocy, and one seldom wanting, is the diminutive size of the head, particularly of the anterior-superior portions, indicating a deficiency of the anterior lobes of the brain. In imbecility, the development of the moral and intellectual powers is arrested at an early period of existence. It differs from idiocy in the circumstance that while in the latter there is an utter destitution of everything like reason, the subjects of the former possess some intellectual capacity, though infinitely less than is possessed by the great mass of mankind. (5) *Moral Insanity*, *i. e.* a morbid perversion of the natural feelings, affections, inclinations, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning facul-

ties, and particularly without any maniacal hallucination. (Consult the interesting paper on insanity by Dr. Prichard, in Cyc. of Prac. Med.) In many it displays itself in an irresistible propensity to murder (homicidal monomania), in others, to theft (kleptomania); while some are impelled to set fire to buildings (pyromania). Their whole character is changed; the pious become impious; the liberal, penurious. (6) *Demonomania*, a variety of melancholy arising from mistaken ideas on religious subjects. (7) *Nymphomania*, or *furor uterinus*, a raving mania of females, connected with disorder of the generative organs.

"The law of England recognizes two states of mental disorder or alienation: (1) *Dementia naturalis*, corresponding to idiocy, and (2) *Dementia adventitia*, or *accidental*, signifying general insanity, as it occurs in persons who have once enjoyed reasoning power. To this state the term lunacy is also applied . . . Besides the terms 'idiocy,' and 'lunacy,' we find another frequently employed in legal proceedings—*viz.*, *unsoundness of mind* (*non compos mentis*), of the exact meaning of which it is difficult to give a consistent definition." 2 Tayl. Med. Jur. (2 edit.) 479.

Medical jurists treat of inferior degrees of diseased minds; as the *delirium* of fever resembling mania; *hypochondriasis*, like to melancholy; *hallucination*, *i. e.* an idea reproduced by the memory, associated and embodied by the imagination; *epilepsy*, tending to *dementia*; *nostalgia*, a form of melancholy originating in despair, from being separated from one's native country; *intoxication*, producing *delirium tremens*, and the *dementia* of old age.—*Wharton*. See the various titles.

MENTAL IMBECILITY, (analogous to "childishness," and "dotage"). 17 Am. Dec. 311.

MENTAL RESERVATION.—A silent exception to the general words of a promise or agreement not expressed, on account of a general understanding on the subject. But the word has been applied to an exception existing in the mind of the one party only, and has been degraded to signify a dishonest excuse for evading or infringing a promise.—*Wharton*.

MENTIONED AND COMPRISED, (in a statute). 1 W. Bl. 533, 534.

MENTITION.—The act of lying; a falsehood.

MEPRIS.—Neglect; contempt.

MER, or **MERE**.—A fenny place.—*Cowell*.

MERA NOCTIS.—Midnight.—*Cowell*.

MERANNUM.—In old records, timbers; wood for building.

MERCABLE.—To be sold or bought.

MERCANTANT.—A foreign trader.

MERCANTILE LAW.—That law which treats of matters of trade between merchant and merchant, whether trading alone, or in partnership, or as members of a company or corporation. It is largely occupied with bills of exchange and other negotiable instruments; contracts of carriage and affreightment; contracts of insurance and of guarantees; and with questions of lien, stoppage *in transitu*, and the like.

MERCAT.—Market; trade.

MERCATIVE.—Belonging to trade.

MERCATURE.—The practice of buying and selling.

MERCEDARY.—One that hires.

MERCENARIUS.—A hiring or servant.—*Jacob*.

MERCEN-LAGE.—The mercian laws, which were observed in many of the midland counties, and those bordering on the principality of Wales, the retreat of the ancient Britons.—*Wharton*.

MERCEES.—In the civil law, a reward of labor in money or other things.—*Culv. Lex*.

MERCHANDISE.—Commodities; articles of personal property ordinarily dealt in by merchants and traders; things bought to be sold again. *See Goods*.

MERCHANDISE, (defined). 3 Daly (N. Y.) 512.

— (embraces what). 20 Mich. 353.

— (in an insurance policy). Anth. (N. Y.) 114; 43 Pa. St. 350.

— (in a statute). 8 Pet. (U. S.) 277.

— (in act of 1821). 22 Vt. 655.

— (within the statute of frauds). 60 Me. 480; 2 Mo. App. 61.

MERCHANDISE, GRAIN AND OTHER, (in an insurance policy). 20 Ind. 294.

MERCHANDISE, TRANSPORTATION OF, (in a charter). 2 Story (U. S.) 16, 53.

MERCHANDISE MARKS ACT, 1862.—The statute 25 and 26 Vict. c. 88. Its object is to prevent the fraudulent marking of merchandise and the fraudulent sale of merchandise falsely marked. Its principal provisions are to make forging or falsely applying any trade mark a misdemeanor, and to impose penalties for wrongfully selling goods with forged or false trade marks, or for marking false indications of quantity on articles for sale, or selling articles so marked. There are also various provisions as to procedure, &c. *See Lud. & Jenk. 19 et seq. See, also, TRADE MARK.*

MERCHANT.—One who traffics to remote countries; also, any one dealing in the purchase and sale of goods and merchandise. *See Josselyn v. Parson, L. R. 7 Ex. 127.*

MERCHANT, (who is). 2 Duv. (Ky.) 107; 2 Salk. 445.

— (a speculator in stocks is not). 8 Ben. (U. S.) 563.

— (in condition of bond). L. R. 7 Ex. 127.

— (in liquor law). 9 Bush (Ky.) 569.

— (in a statute). 2 Atk. 612.

— (in statute of frauds). 7 Cranch (U. S.) 350; 6 Pet. (U. S.) 162.

MERCHANT AND MERCHANT, ACCOUNTS BETWEEN, (in statute of limitations). 6 T. B. Mon. (Ky.) 11; 1 Ilust. (N. J.) 379; 5 Wheel. Am. C. L. 352; 19 Ves. 180.

MERCHANT APPRAISERS.—*See APPRAISEMENT.*

MERCHANT APPRAISERS, (who are). 24 How. (U. S.) 521.

MERCHANT SHIPPING.—The law relating to the ownership, registration and transfer of British merchant ships, to the qualifications and control of masters, mates, pilots, engineers, &c., and to the protection and relief of ordinary seamen, is contained in the Merchant Shipping Act, 1854, and the various acts amending it, down to the Merchant Shipping Act, 1876, for the prevention of casualties by unseaworthy ships and overloading, the Merchant Shipping Acts, 1880, and the Merchant Shipping (Carriage of Grain) Act, 1880, for enforcing precautions to prevent grain cargoes from shifting. The law of merchant shipping also deals with affreightment, marine insurance, hypothecation, salvage and wreck (*q. v.*) Maude & P. Mer. Sh.; Sm. Merc. L. 176; 3 Steph. Com. 148.

MERCHANT VESSEL, (what is). 9 Wend. (N. Y.) 15.

MERCHANTABLE, (in a contract). 11 Ct. of Cl. 650; 5 Me. 419.

MERCHANTABLE ORDER, (in a contract). 34 Barb. (N. Y.) 204, 206.

MERCHANTMAN.—A ship or vessel employed in commerce or in the merchant-service.

MERCHANTS' ACCOUNTS.—See ACCOUNT, § 2.

MERCHANTS' ACCOUNTS, (what constitute). 4 Cranch (U. S.) C. C. 696; 7 Miss. 328; 1 Edw. (N. Y.) 417; 6 Jones (N. C.) L. 385; Ang. Lim. § 161; 8 Com. Dig. 717.

— (what are not). 20 Johns. (N. Y.) 576; 5 Johns. (N. Y.) Ch. 522; Ang. Lim. § 164.

— (in a statute). 5 Cranch (U. S.) 15; 7 Id. 350; 1 Cranch (U. S.) C. C. 433, 452; 2 Johns. (N. Y.) 200.

MERCHET.—See MARCHET.

MERCIAMENT.—An amerciament, penalty, or fine (qq. v.)

MERCIMONIATUS ANGLIÆ.—The impost of England upon merchandise.—Cowell.

MERCY.—Formerly when the judgment in an action was for the plaintiff, the defendant was said to "be in mercy" (*miser cordia*), i. e. amerced or fined for his delay of justice; and when the judgment was for the defendant, the plaintiff was said to "be in mercy" for his false claim. The phrase has been long obsolete.—Brown.

MERCY, PREROGATIVE OF.—The executive may pardon a criminal after conviction, and without assigning any cause for so doing; but the improper exercise of the prerogative would reflect upon the government. The prerogative does not extend to exempt the accused from undergoing his prosecution. See COMMUTATION, § 1; PARDON.

MERE MOTION.—The free and voluntary act of a party himself, without the suggestion or influence of another person. The phrase is used in letters-patent, whereby the king grants, "of his (especial grace, certain knowledge, and) *mere motion*" (*mero motu*), his license, power and authority to the patentee to use and enjoy, exclusively, the new invention, the grant being assumed to be of the free and unfettered will of the sovereign. (Webst. Pat. 76, n. (d).) The expression is also applied

to the occasional interference of the court, who, under certain circumstances, will (*ex mero motu*), "of their own motion," object to an irregularity in the proceedings of the parties, though no objection be taken to the informality by the plaintiff or defendant himself. (1 Bing. N. C. 258; 1 Bos. & P. 366.)—Brown.

MERE RIGHT.—The right of property (the *jus proprietatis*), which a person may have in anything, without having either possession or even the right of possession, is frequently spoken of under the name of the "mere right," and the estate of the owner is, in such cases, said to be totally divested and put to a right. Co. Litt. 345.

MERENNIIUM.—Timber.—Cowell.

MERGED, (when estates in land are). Davies 12.

MERGER.—NORMAN-FRENCH: to drown. Co. Litt. 338b.

§ 1 That operation of law which extinguishes a right by reason of its coinciding with another right, of greater legal worth, in the same person. By "operation of law" is meant that it may take place independently of the wishes or intention of the parties; and by "greater legal worth" is meant that one right in estimation of law, though not necessarily in fact, is of higher value than the other.

§ 2. Rights of action.—In the law relating to rights of action, when a person takes or acquires a remedy or security of a higher nature, in legal estimation, than the one which he already possesses for the same right, then his remedies in respect of the minor right or security merge in those attaching to the higher one. (Leake Cont. 506; Price v. Moulton, 10 Com. B. 561) Thus, if a bond is taken for a simple contract debt, the remedy upon the simple contract is extinguished, and therefore an action for the debt must be brought on the bond; again, if judgment is recovered in such an action, the right of action on the bond is merged in the judgment, and therefore no second action can be brought on the bond. *In re European Central Rail. Co.*, 4 Ch. D. 33.

In the law of property, merger takes place either according to the rules of law or according to those of equity.

§ 3. **Estates at law.**—At law, when a greater and a less estate meet in the same person without any intermediate estate, the less estate is merged in the greater, so as to cease to exist. The greater estate is thus accelerated, but not enlarged. (3 Pres. Conv. 7. See ENLARGEMENT.) Thus, if A. is tenant for life of land, and the reversion in fee afterwards descends to, or is otherwise acquired by him, his estate for life merges in the fee, and he thus becomes tenant in fee in possession. But if a person has two estates in different rights, as where he has one in his own right, and the other in right of his wife, or as executor, there will in general be no merger. An estate for life being, in the estimation of the law, greater than any term of years, however long, it follows that when a person holding a term for one thousand years becomes entitled to the land for an estate for life, the term merges in the life estate. (2 Bl. Com. 177 and notes; Burt. Comp. R. P. §§ 747, 896; 8 Jarman & B. Conv. 1, n. (a).) Merger, or its consequences, are in some instances prevented by statute. Thus, in England, an estate tail does not merge in the freehold (Stat. 13 Edw. I. c. 1 (*De Donis*). See as to the preservation of the rights incident to a reversionary term which has merged, 8 and 9 Vict. c. 106, § 9: Wms. Real Prop. 251. See ENLARGEMENT); and now by the Judicature Act, 1873, there can be no merger, by operation of law only, of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity. (Sect. 25, § 4.) This enactment is apparently meant to recognize the rule which prevailed in equity before the act, namely, that where the estate of a trustee accidentally merges, the *cestui que trust* shall not thereby be injured. Wms. Real Prop. 415.

§ 4. **In equity**, where a legal and equitable estate, equal and co-extensive, unite in the same person, the latter merges in the former. (Wats. Comp. Eq. 619; Spence Eq. 879; Burt. Comp. R. P. § 1388.) Where an estate of inheritance in land and the right to a charge upon it become vested in the same person absolutely (as where a person entitled to have a portion raised out of land becomes entitled to the land

in fee-simple), the charge will merge unless kept alive, or unless it is to the owner's interest that it should not merge. (Wats. Comp. Eq. 621; Burt. Comp. R. P. § 1513; Spence Eq. 346, 424, citing Gilb. Lex Præt. 264.) There is a general leaning against merger in courts of equity, except in those cases where merger is convenient and beneficial to all parties.

§ 5. **Crown grants.**—In the law relating to grants by the crown, it is the rule that when a right belonging to the crown by virtue of its prerogative (such as the right to wreck) is granted to a subject as an appendancy to land, then if the land comes into the hands of the crown the right merges in the *jus coronæ*, and does not pass by a grant of the land, but must be created again. Rights vested in the crown otherwise than *jure coronæ* (such as warrens, fairs, &c.) do not merge. (Case of the Abbot of Strata Marcella, 9 Co. 24; Heddy v. Wheelhouse, Cro. Eliz. 591; Duke of Northumberland v. Houghton, L. R. 5 Ex. 127.) As to the merger of tithes, see that title; also EXTINGUISHMENT.

§ 6. **In criminal law.**—The merger of a lesser in a graver offense which is necessarily included in the commission of the latter. Thus, burglary often includes larceny; battery includes assault, &c., &c. Where the two offenses are of equal degree there can be no merger.

MERGER, (defined). 89 Ill. 170; 2 Cow. (N. Y.) 300; 5 Watts (Pa.) 456; 1 Hill (S. C.) Ch. 276.

— (history of the doctrine). 4 Greenl. (Me.) 164.

— (how considered in law and equity). Co. Litt. 338 b, n. 4.

— (when takes place). 15 Barb. (N. Y.) 70, 75; 2 Cow. (N. Y.) 246; 3 Johns. (N. Y.) Ch. 53; 5 Id. 35; 6 Id. 393, 417; 4 Paige (N. Y.) 578, 642; 1 Sim. 298.

— (when will not take place). 1 Paige (N. Y.) 192; 2 Plowd. 418.

— (when the civil remedy is merged in the felony). 15 Mass. 78; 4 N. H. 239; 1 Wheel. Am. C. L. 232.

MERITORIOUS CAUSE OF ACTION.—A person is sometimes said to be the meritorious cause of action when the cause of action, or the consideration on which the action was founded, originated with, or was occasioned by, such person. Thus, in an action by husband and wife for the breach of an express promise to the wife in consideration of her personal labor and skill in curing a wound, she would be termed the meritorious cause of action. So in an action by husband and wife upon an agreement entered into with her before marriage, she would be the

meritorious cause of action; for it originated or accrued out of a contract entered into with her. So a promissory note made to the wife during coverture in her own name is presumed to be made upon a consideration moving from her. *Leake Cont.* 240-41.

MERITORIOUS CONSIDERATION.—One founded upon some moral obligation; a valuable consideration in the second degree.

MERITS.—A person is said to have a good cause of action or defense on the merits when his claim or defense is based on the real matters in question, and not on any technical ground. Thus, in England, before the judicature acts, a defense based on the misjoinder or nonjoinder of parties by the plaintiff would not have been a defense on the merits. If a defendant inadvertently allows judgment to go by default, the court will not, as a rule, set the judgment aside and allow him to defend unless he makes an affidavit of merits, *i. e.* an affidavit showing that he has a substantial ground of defense to the action.

MERITS, (affidavit of, when defective). 2 *Hill* (N. Y.) 359.

— (in code of procedure, § 349). 2 *Daly* (N. Y.) 203; 4 *How. Pr.* 329; 3 *Sandf.* 750; 1 *E. D. Smith* 349.

— (defense on the). 1 *Pa.* 291; 1 *Dowl. & Ry.* 155.

MERO MOTU.—*See* **EX MERO MOTU**; **MERE MOTION**.

MERSCUM.—A lake; also, a marsh, or fen-land.

MERSE-WARE.—The ancient name for the inhabitants of Romney Marsh, Kent.—*Cowell*.

MERTLAGE.—A church calendar or rubric.—*Cowell*.

MERTON, STATUTE OF.—The Stat. 20 Hen. III., is so called because it was passed in the convent of St. Augustin, at Merton, in Surrey. The particular provisions of the statute regarded (1) legitimacy of children; (2) dower; (3) inclosure of common lands; and (4) wardships.—*Brown*.

MESCROYANTS.—Unbelievers.

MESE.—A house and its appurtenance.—*Cowell*.

MESNALTY.—The tenure or seigniorship of a mesne lord. "If there be lord [paramount], mesne [lord], and tenant [paravail], and . . . if the lord paramount purchase the tenancie [of the tenant paravail] in fee, then . . . the seigniorie of the mesnalty is extinct." *Litt.* § 231.

MESNE.—**NORMAN-FRENCH:** *meen*; **MODERN FRENCH:** *mesne*, from late Latin, *medianus* from *medius*, middle. *Britt* 58a, *Diez Etym Wortb* i 276.

§ 1. Middle, intervening, or intermediate. Thus, in framing an assignment of a lease which has already passed through several hands since it was originally granted, it is usual to refer to all the assignments before the last as "mesne assignments." So, if property is mortgaged first to A. and then to B., and is subsequently mortgaged to A. a second time, B. is said to be a mesne incumbrancer, or to have a mesne incumbrance, because his mortgage stands between the two mortgages to A. *See* **PRIORITY**; **TACKING**.

§ 2. **Profits.**—When a person is wrongfully in possession of land, and the rightful owner brings an action to recover possession, he usually sets up in addition, either in the same or a separate action, a claim for "mesne profits," *i. e.* for the benefit which the defendant has derived from his wrongful occupation of the land between the time when he acquired wrongful possession and the time when the possession was taken from him. (1 *Steph. Com.* 294.) It was formerly called an action of trespass for mesne profits, being a species of the action of trespass *vi et armis*. (*See* **TRESPASS**; *Ad. Eject.* 379. *See* **JOINDER**; *also*, **DOUBLE RENT**; **DOUBLE VALUE**.) In the old books "mesne" often denotes "mesne lord." *Co. Litt.* 152b.

§ 3. The writ of mesne was a writ which a tenant paravail had to compel his immediate lord (the mesne) to protect or acquit him against the lord paramount. (*Litt.* § 142. *See* **ACQUIT**, § 2.) It was abolished by Stat. 3 and 4 Will. IV. c. 27.

MESNE ASSIGNMENT.—*See* **MESNE**, § 1.

MESNE INCUMBRANCES.—*See* **MESNE**, § 1.

MESNE LORD.—*See* **LORD**; **MESNALTY**.

MESNE PROCESS.—*See* **PROCESS**.

MESNE PROCESS, (what is). 2 *Barn. & Ald.* 56, 63.

MESNE PROCESS, (in a statute). 1 Dowl. & Ry. 377.

MESNE PROFITS.—See MESNE, § 2.

MESNE PROFITS, (whether included in "damages," *quare*). Coxe (N. J.) 125.

— (as used in the statute abolishing the action for). 6 Hill (N. Y.) 328, 333.

— (when recoverable). Coxe (N. J.) 466.

— (may be recovered in an action of ejectment). 2 Stark. Ev. 544.

— (cannot be recovered in an action of account-render). 5 Watts (Pa.) 474.

— (action for, distinguished from action for use and occupation). 60 Barb. (N. Y.) 463.

MESNE TENURE.—See TENURE.

MESNE, WRIT OF.—See MESNE, § 3.

MESS PORK, (in a contract). 2 Bing. N. C. 668, 677.

MESSARIUS.—A chief servant in husbandry; a bailiff. Mong. Ang. t. ii. 832.

MESSE THANE.—One who said mass; a priest.—*Cowell*.

MESSENGER.—

§ 1. One who carries an errand; a fore-runner.

§ 2. Messengers are certain officers employed, in England, under the direction of the secretaries of state, and always ready to be sent with despatches, foreign and domestic. They were employed with the secretaries' warrants to arrest persons for treason, or other offenses against the State, which did not so properly fall under the cognizance of the common law, and, perhaps, were not properly to be divulged in the ordinary course of justice. 2 Hawk. P. C. c. xvi. § 9.

§ 3. There are other officers distinguished by this appellation, as the messengers of the lord chancellor, privy council, and exchequer, &c. Also, in bankruptcy, persons officially appointed who seize a bankrupt's property. The office of messenger of the great seal has been abolished by 37 and 38 Vict. c. 81.—*Wharton*.

MESSINA.—Harvest.—*Cowell*.

Messis sementem sequitur: Harvest follows the sower. See EMBLEMENTS.

MESSUAGE.—NORMAN-FRENCH: *message*, a house. Liber Albus 201a.

A house. As a word of conveyance, "messuage" includes not only the buildings, but also the curtilage, orchard and garden belonging thereto. (Co. Litt. 5b, 56b.) A "capital messuage" is the chief mansion-house of an estate. 1 Dav. Prec. Conv. 89.

MESSAGE, (includes a church). 1 Chit. Gen. Pr. 163.

VOL. II.

MESSAGE, (includes the curtilage). T. Jones 227.

— (includes curtilage, but not garden). Co. Litt. 5b, n. (1).

— (distinguished from "house"). 2 T. R. 498, 502.

— (synonymous with "dwelling-house"). 2 Bing. N. C. 617.

— (synonymous with "house"). 1

Thom. Co. 215, 216 n.; 2 Saund. 410, n. (2); Shep. Touch. 94.

— (synonymous with "mansion," "dwelling-house," "house and burgage"). 1 Chit. Gen. Pr. 167.

— (what passes by grant of). 4 Com. Dig. 542, 544; Shep. Touch. 93.

— (in dower act). 4 Blackf. (Ind.) 331.

— (in a deed). 3 Atk. 82; 2 Saund.

400; 1 Chit. Gen. Pr. 158, 175; Co. Litt. 56 b.

— (demise of). 2 Stark. 508.

— (in a will). 5 Barn. & Ald. 407, 411;

2 W. Bl. 727; 1 Bos. & P. 53, 57; 7 Co. 23;

Cro. Eliz. 89; 15 East 309; 4 Mau. & Sel. 550;

1 Meriv. 450; 8 Moo. 665; 1 Myl. & K. 571; 2

Sim. 150, 151; 3 Wils. 141, 143; 1 Chit. Gen.

Pr. 159; Com. L. & T. 75, 76.

MESSAGE, ALL MY FREEHOLD, (in a will).

2 Bing. 456; 10 Moo. 158.

MESSAGE AND HOUSE, (in a will). 4 Com.

Dig. 154.

MESSAGE AND TENEMENT, (in a declara-

tion). 1 Moo. & P. 330.

MESSAGE, FARM AND LANDS, (in a will). 9

East 448, 460.

MESSAGE OR TENEMENT, (in a declaration).

3 Wils. 23.

MESSAGE WITH THE APPURTENANCES, (in

a will). 2 W. Bl. 1148, 1151 n.

MESSUAGES, (in a devise). 2 Bos. & P. 303

4 Dowl. & Ry. 246.

MESSUAGES, ALL MY, (in a will). 1 Marsh.

61; 5 Taunt. 321.

METACHRONISM.—An error in com-

putation of time.

METALS, (does not include "gold and silver").

2 Barn. & Ad. 592, 597.

— (in 17 Stat. at L. 230). 1 Otto (U. S.)

570.

METATUS.—A dwelling; a seat; a sta-

tion; quarters; the place where one lives or

stays.—*Spel. Gloss*.

METAYER SYSTEM.—Under this, the

land is divided in small farms, among single

families, the landlord generally supplying the

stock which the agricultural system of the coun-

try is considered to require, and receiving, in

lieu of rent and profit, a fixed proportion of the

produce. This proportion, which is generally

paid in kind, is usually (as is implied in the

words *métayer*, *mezzaiuolo* and *medietarius*), one-

half. (1 Mill Pol. Ec. 296, 363, and 2 Smith

Wealth of Nat. 3 c. ii.)—*Wharton*.

METECORN.—A measure or portion of

corn, given by a lord to customary tenants as a

reward and encouragement for labor.—*Cowell*.

METEGAVEL.—A tribute or rent paid in victuals.—*Cowell*.

METER.—An instrument of measurement, as a coal-meter, a land-meter.

METES AND BOUNDS.—In ordinary cases where a widow is entitled to dower of land, her share is ascertained and set apart to be held by her in severalty, and she is then said to hold it "by metes and bounds," i. e. by measurement and boundaries. Litt. §§ 36, 44; Co. Litt. 32a, b. *See* ADMEASUREMENT.

METES AND BOUNDS, (description of lands by). 8 Conn. 19; 4 Wheel. Am. C. L. 255; 8 Id. 286.

METEWAND, or METEYARD.—A staff of a certain length wherewith measures are taken.

METHEL.—Speech, discourse; *mathlian*, to speak, to harangue.—*Anc. Inst. Eng.*

METHOD, (defined). Fess. Pat. 80, 127. — (synonymous with "art"). 4 Fish. (U. S.) Pat. Cas. 175.

— (equivalent to "the mode of doing a thing"). Fess. Pat. 87.

— (in a statute). 8 T. R. 106.

METHODS OF OPERATING, (in a statute). Fess. Pat. 99.

METRIC SYSTEM.—A system in numbering of coinage, weights, measures, &c., wherein the *integer* is divided into fractions of a tenth, hundredth, &c., and no others. Contracts may now be made on this system. *See* 27 and 28 Vict. c. 117, which recites that "for the promotion and extension of our internal, as well as our foreign trade, it is expedient to legalize the use of the metric system of weights and measures." *See, also*, U. S. Rev. Stat. §§ 3569, 3570, also legalizing the system (subject to the approval of the authorities of the several States) in America.

METROPOLITAN.—The archbishop of Canterbury is styled "Primate of all England and the Metropolitan," because the province of Canterbury contains within it the metropolis or chief city. The archbishop of York is metropolitan of the province of York.—*Brown*.

METROPOLITAN BOARD OF WORKS.—An authority created by the English Metropolis Local Management Act, 1855, (amended by the acts of 1856, 1862, 1871, 1875, 1876, 1877, 1878, 1879 and 1880.) The general scheme of these acts is to provide for the formation of district boards of works by the union of the smaller parishes of the metropolis

into groups, and for the formation of a corporation called the "Metropolitan Board of Works," representing the whole metropolis. The metropolitan board has jurisdiction in matters affecting the metropolis at large (e. g. the main sewers, the naming and numbering of streets, executing public improvements, &c.), while the vestries of the large parishes, and the district boards formed as above mentioned, have jurisdiction in matters affecting their respective districts (e. g. the local sewers and drains, new buildings, paving, lighting and cleansing streets, removing nuisances, &c.). The powers and authorities exercisable in other places by local boards and other sanitary authorities (q. v.) are thus, in London, divided between the metropolitan board on the one hand, and the parishes and district boards on the other. *See* POLICE; RATE.

METTESHEP, or METTENSCHIEP.—In old records, an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn.

METUS.—In the civil law, fear of great evil; such fear as a brave man could feel, as the apprehension of loss of life or limb.—*Adm. Lex.*

MEUBLES.—In the French law, the movables of English law. Things are *meubles* from either of two causes: (1) From their own nature, e. g. tables, chairs; or (2) from the determination of the law, e. g. obligations.

MEUBLES MEUBLANS.—In the French law, the utensils and articles of ornament usual in a dwelling-house.—*Brown*.

MEYA.—A mow or heap of corn. Blount Ten. 130.

MICEL-GEMOTE.—*See* MICHEL-GEMOTE.

MICHAELMAS.—The feast of the Archangel Michael, celebrated in England on the 29th of September, and one of the usual quarter days.

MICHAELMAS HEAD COURT.—A meeting of the heritors of Scotland, at which the roll of freeholders used to be revised. Stat. 20 Geo. II. c. 50. *See* Bell Dict.

MICHAELMAS TERM.—This begins in England on the 2d and ends on the 25th of November in every year. The division of the legal year into terms is abolished, so far as relates to the administration of justice. Jud. Act, 1873, § 26.

MICHEL-GEMOTE.—The great meeting or ancient parliament of the kingdom. 1 Bl. Com. 147.

MICHEL-SYNOTH.—The great council of the Saxons. 1 Bl. Com. 147.

MICHERY.—Theft; cheating.

MIDDLE LETTER, (effect of omission of). 3 Pet. (U. S.) 7; 14 *Id.* 322; 2 Cow. (N. Y.) 463; 1 Hill (N. Y.) 102; 5 Johns. (N. Y.) 84; 3 Gr. (N. J.) 130; 5 Halst. (N. J.) 230.

MIDDLE THREAD.—*See* AD FILUM MEDIUM AQUÆ.

MIDDLE-MAN.—An agent between two parties; a broker between producers and consumers; an agent who employs a sub-agent. In Ireland a person who takes land in large tracts from the proprietors, and then leases it out to the peasantry in small portions at a greatly enhanced rent.

MIDDLESEX.—

§ 1. **Land Registry**.—The Middlesex Land Registry is a registry of assurances relating to land situate in the county of Middlesex. (*See* LAND REGISTRIES, §§ 3, 6.) It is regulated by Stat. 7 Anne, c. 20, which makes every such deed fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless it has been registered before the purchaser's or mortgagee's deed. (*Wms. Real Prop.* 196.) A will of lands in the county also requires registration within six months of the testator's death, or before the registration of an assurance to a purchaser or mortgagee from the testator's heir-at-law. *Id.* 223; Vendor and Purchaser Act, 1874, § 8.

§ 2. **Sessions**.—The sessions of the peace for the county of Middlesex are held twice in every month, the first sessions in January, April, July, and October being the general quarter sessions. At the hearing of appeals and trials of felonies or misdemeanors, the sessions are presided over by an assistant judge appointed by the crown. Stats. 7 and 8 Vict. c. 71; 22 and 23 Vict. c. 4; 4 Steph. Com. 320. *See* JUSTICES OF THE PEACE; SESSION OF THE PEACE.

MIDDLESEX, BILL OF.—*See* BILL OF MIDDLESEX.

MIDDLE TERM.—In logic, the term which occurs in both of the premises in the syllogism, being the means of bringing together the two terms in the conclusion. *See* SYLLOGISM.

MIDSHIPMAN.—A kind of naval cadet in a ship of war whose business it is to second and transmit the orders of the superior officers, and assist in the management of the ship and its armament.—*Webster*.

MIDSUMMER-DAY.—The summer solstice, which is on the 24th day of June, and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A. D. 400. It is generally a quarter day for the payment of rents, &c.—*Wharton*.

MIDWIFE.—A woman who attends upon other women when in child-bed; an *accoucheuse*.

MIGHT, (in a charter). 5 Barn. & Ald. 692 n.; 1 Dowl. & Ry. 148.

MILE.—A measure of length or distance, containing eight furlongs, or seventeen hundred and sixty yards, or five thousand two hundred and eighty feet.

MILE, WITHIN HALF A, (in a covenant). 9 Barn. & C. 774, 779.

MILEAGE.—Traveling expenses, at a given rate per mile, which are allowed to members of legislative bodies, witnesses, sheriffs and bailiffs.

MILES.—Generally, a soldier; particularly, a knight.

MILES, (how to be computed). 2 W. Bl. 969; 1 Cro. 267.

MILES, STATUTE, (how to be computed). 1 Cro. 212.

MILITARE.—To be knighted.

MILITARY.—Anything pertaining to war, or to the army.

MILITARY BOUNTY LANDS.—*See* BOUNTY LANDS.

MILITARY CAUSES.—All matters concerning the discipline of the army, and contracts, &c., relating to deeds of arms and war.

MILITARY COURTS.—In England, the Court of Chivalry and courts martial; in America, courts martial and courts of inquiry. *See* COURT MARTIAL; COURT OF CHIVALRY.

MILITARY FEUDS.—The genuine or original feuds which were in the hands of military men, who performed military duty for their tenures. *See* TENURE.

MILITARY JURISDICTION, (in United States constitution). 4 Wall. (U. S.) 2, 141.

MILITARY LAW.—*See* MARTIAL LAW.

MILITARY OFFENSES.—Those offenses which are cognizable by the courts military, as insubordination, sleeping on guard, desertion, &c.

MILITARY OR USURPED POWER, (in insurance policy). 5 Otto (U. S.) 127; 40 Conn. 582.

MILITARY SAVINGS BANKS.—

By 22 and 23 Vict. c. 20, (which repealed former acts,) the queen may establish or continue military or regimental savings banks, for the receiving sums of money from such of the non-commissioned officers and soldiers employed in her service, either in the United Kingdom or upon foreign stations (India alone excepted), as may be desirous of depositing the same, and for receiving deposits of any money or funds whatsoever raised or paid for objects or purposes connected with non-commissioned officers and soldiers, which her majesty may from time to time think fit to authorize to be deposited in such savings banks. The regulation and the management of such institutions are intrusted to the secretary at war for the time being, in concurrence with the commander-in-chief, and the commissioners of the treasury. (*See, also*, 26 and 27 Vict. c. 12.)—*Wharton*.

MILITARY SERVICE, (in life policy). 48 N. Y. 34; 8 Am. Rep. 518.

— (in act of March 3d, 1849). 18 Wall. (U. S.) 34.

MILITARY SERVICE, ACTUAL, (in a statutory exemption). 18 Iowa 513.

MILITARY STATE.—The soldiery of the kingdom of Great Britain.

MILITARY STATION, (synonymous with "military post"). 4 Otto (U. S.) 219.

MILITARY TENURES.—The various tenures by knight-service, grand-serjeanty, cornage, &c., are frequently called "military tenures," from the nature of the services which they involved. 1 Steph. Com. 204. *See* SERVICE; TENURE.

MILITARY TESTAMENT.—A nuncupative will, *i. e.* one made by word of mouth, by which a soldier in actual service may dispose of his goods, pay, and other personal chattels, without the forms and solemnities which the law requires in other cases.

MILITARY TRIBUNAL, (in United States constitution). 11 Op. Att. Gen. 297.

MILITES.—Knights; and in Scotch law, freeholders.

MILITIA.—The national soldiery, as distinguished from the regular forces or standing army, being the inhabitants, or as they have been sometimes called, the *trained bands* of a town or county, who are armed on a short notice for their own defense. In America the militia constitute in each State the organization known as the national guard.

MILITIA, (in a statute). 5 Dutch. (N. J.) 233.

MILITIA, CALLING FORTH THE, (in United States constitution). 3 Serg. & R. (Pa.) 593, Sup.

MILITIA OFFICER, (in a statute). 5 Wheat. (U. S.) 46.

MILL.—(1) A machine for grinding, sawing, manufacturing, &c.; also, the building containing such machinery. (2) The tenth part of a cent.

MILL, (defined). 30 Conn. 20.

— (includes what). 6 Greenl. (Me.) 436.

— (what passes by a conveyance of). 10

Serg. & R. (Pa.) 63.

— (what will not pass with). 3 Salk. 40.

— (machinery of, is part of the freehold).

2 Dowl. & Ry. 1.

— (when not part of the inheritance). 5

Barn. & Ald. 826, 829.

— (when cannot be taken in execution under a *fi. fa.*) 4 J. B. Moo. 281.

— (mortgage of). 4 Man. & Ry. 277.

— (in a deed). 1 Brod. & B. 506, 510;

Ang. Waterc. § 90.

— (in a devise). 3 Mas. (U. S.) 280.

MILL WITH THE APPURTENANCES, (demise of). 1 Lev. 131.

MILL-DAM, (what is not). 35 Wis. 41.

MILL PRIVILEGE, (what is). 2 Watts (Pa.) 329.

— (equivalent to "mill site"). 35 Conn. 512.

— (in a deed). 16 Me. 63; 20 Me. 61; 7 Mass. 499.

MILL SAW, (is not a tool). 10 Me. 135.

MILL SITE, (defined). 35 Conn. 158, 512.

— (what is conveyed by). 32 Me. 383.

— (in a grant). 6 Cow. (N. Y.) 677.

MILLBANK PRISON.—Formerly called the "Penitentiary at Millbank." A prison at Westminster, for convicts under sentence of transportation, until the sentence or order shall be executed, or the convict be entitled to freedom, or be removed to some other place of confinement. This prison is placed under the inspectors of prisons appointed by the secretary of state, who are a body corporate, "The Inspectors of the Millbank Prison." The inspectors make regulations for the government thereof, subject to the approbation of the secretary of state, and yearly reports to him, to be laid before parliament. The secretary also appoints a governor, chaplain, medical officer, matron, &c. (5 and 6 Vict. c. 98; 6 and 7 Vict. c. 26; 11 and 12 Vict. c. 104; 13 and 14 Vict. c. 39; 23 and 24 Vict. c. 60; and 32 and 33 Vict. c. 95.)—*Wharton*.

MILLEATE, or **MILI-LEAT**.—A trench to convey water to or from a mill. Stat. 7 Jac. I. c. 19.

MILLED MONEY.—Coined money. Leach C. C. 708.

MILL-HOLMS.—Low meadows and other fields in the vicinity of mills, or watery places about mill-dams.—*Encycl. Lond.*

MILLS, (what passes by a grant of). *Shep. Touch.* 89.

— (in a mortgage). 124 *Mass.* 71.

MILLS WITH THE APPURTENANCES, (in a conveyance). 4 *Rawle* (Pa.) 342.

MINA.—A measure of corn or grain.—*Cowell; Spel. Gloss.*

MINAGE.—A toll or duty paid for selling corn by the mina.—*Cowell.*

MINARE.—To dig mines.—*Cowell.*

MINATOR.—In old records, a miner.

MINATOR CARUCÆ.—A ploughman.—*Cowell.*

Minatur innocentibus, qui parcit nocentibus (4 Co. 45): He threatens the innocent who spares the guilty.

MINE, (when applied to coal means a worked vein). 85 *Pa. St.* 344.

— (*cestui que use* for life cannot open). 2 *P. Wms.* 242.

— (in a statute). 2 *East* 167.

MINERALS—MINES.—

§ 1. In the most general sense of the term, minerals are those parts of the earth which are capable of being got from underneath the surface for the purpose of profit. The term, therefore, includes coal, metal ores of all kind, clay, stone, slate, and coprolites. ("Surface" means that part of the land which is capable of being used for agricultural purposes. *Midland Rail. Co. v. Checkley*, L. R. 4 *Eq.* 19; *Heat v. Gill*, 7 *Ch.* 669; *Att.-Gen. v. Tomline*, 5 *Ch. D.* 762.) A mine is a work for the excavation of minerals, by means of pits, shafts, levels, tunnels, &c., as opposed to a quarry, where the whole excavation is open. While unsevered, minerals form part of the land, and as such, are real estate. When severed, they become personal chattels. *Bain. M. and M.* 1.

§ 2. Royal mines are mines of gold or silver, and, in England, belong to the sovereign, in whosever land they may be found. (1 *Bl. Com.* 295.) As to mines of lead, &c., containing also gold or silver, see *Stats.* 4 *W. & M.* st. 1, c. 80, and 5 *W. & M.* c. 6. There are no royal mines in this sense in America.

§ 3. In other cases, mines and minerals belong *prima facie* to the owner of the surface of the land, though they may be, and frequently are, held by different per-

sons. It follows from the nature of copyhold tenure that the minerals under copyhold land belong to the lord, though he cannot work them without the tenant's consent, except by a local custom. (See *COPYHOLD*, § 3.) In many places, customs or prescriptions exist, by virtue of which persons are entitled to work mines in land, the freehold of which is vested in another person. Such is the rule in California. 5 *Cal.* 36, 97, 308; 6 *Id.* 148; *Bain. M. & M.* 548 *et seq.* See *GALE*; *STANNERIES*; *TIN-BOUNDING*.

§ 4. Confirmation of Sales Act, 1862.—In consequence of an English judicial decision (*Buckley v. Howell*, 29 *Beav.* 546,) that the ordinary power of sale contained in settlements does not authorize the trustees to sell the settled lands without the minerals, or the minerals without the lands, the Confirmation of Sales Act, 1862, (*Stat.* 25 and 26 *Vict.* c. 168,) was passed to confirm all such sales theretofore made, and to authorize such sales to be made in future, with the sanction of the Chancery Division. *Wms. Real Prop.* 311.

§ 5. As to the rights of adjoining owners in respect of minerals, see *BARRIER*; *BOUNDARIES*, § 4; *BOUNDS*; *EASEMENT*, § 1; *SUPPORT*.

§ 6. By modern statutes, numerous obligations have been imposed on mine owners for the protection of the public, and of persons employed in mines. The principal acts now in force in Great Britain, are the Coal Mines Regulation Act, 1872, and the Metalliferous Mines Regulation Acts, 1872 and 1875. (See *FENCE*, § 4.) The right to work minerals under railways, canals, water-works and highways, is restricted by the acts relating to those matters.

MINERAL, (oil is). 3 *Pittsb. (Pa.)* 201, 204.

MINERAL, OR MAGNESIA OF ANY KIND, (in a deed). 5 *Watts* (Pa.) 34.

MINERAL PRODUCTS, (in revenue law). 3 *Pittsb. (Pa.)* 201.

MINERALS, (in a deed). 2 *Stockt. (N. J.)* 128; L. R. 1 *Ch.* 303.

— (in statute, when not confined to metals). *Wilberf. Stat. L.* 126.

MINERATOR.—In old records, a miner.

MINES, (when subject to dower). 1 *Taunt.* 402.

— (in a deed). 2 *Stockt. (N. J.)* 128; 1 *Chit. Gen. Pr.* 184.

— (in a lease). 2 *Mod.* 193.

MINES AND MINERALS, (in reservation in a conveyance). L. R. 7 *Ch.* 699.

— (in a statute). L. R. 4 *Eq.* 19.

MINES AND MINING CLAIMS, (in constitution of Nevada). 5 *Sawyer. (U. S.)* 575.

MINES, CLAY, (what constitute). 3 *Barn. & Ad.* 424, 426.

MINES, COAL, (in a statute). 2 *Barn. & Ad.* 65, 78.

Minima poena corporalis est major quamvis pecuniaria (2 Inst. 220): The smallest bodily punishment is greater than any pecuniary one.

Minime mutanda sunt quæ certam habent interpretationem (Co. Litt. 365): Things which have a certain interpretation are to be altered as little as possible.

MINIMENT.—See **MUNIMENTS**.

Minimum est nihilo proximum: The smallest is next to nothing.

MINING COMPANIES.—This designation was formerly applied in England to the associations formed in London in 1825 for working mines in Mexico and South America; but at present it comprises, both in England and America, all mining projects carried on by joint-stock associations or corporations.

MINISTER.—(1) An agent; one who acts not by any inherent authority, but under another. (2) In politics, one to whom a sovereign intrusts the administration of government. In Great Britain, the word *ministry* is used as a collective noun for the heads of departments in the state. (3) In religion, a pastor of a church, chapel, or meeting-house, &c. (4) As to the use of the word in international law, see **AMBASSADORS**.

MINISTER, (in a statute). 1 Mass. 32; 5 Id. 524; 6 Id. 401; 7 Id. 60, 230; 2 Pick. (Mass.) 403; 8 Ad. & E. 181, 182.

— (holds parsonage lands in right of his parish). 2 Mass. 500.

— (does not hold office at the will of the parish). 3 Mass. 160, 170.

MINISTER OF THE GOSPEL, (who is). 1 Greenl. (Me.) 102.

MINISTER, OTHER PUBLIC, (in a statute). 1 Taunt. 106.

MINISTER, PUBLIC, (in a statute). 1 Baldw. (U. S.) 234.

MINISTER, STATED AND ORDAINED, (who is). 1 Pick. (Mass.) 235.

MINISTERIAL is opposed to judicial or discretionary. Thus, a ministerial office or duty is one which merely involves the following of instructions; in other words, one which can be performed without the exercise of more than ordinary skill, prudence, or discretion, *e. g.* the payment or receipt of money, the execution of a deed, or the like (*see* **LAW TRUSTS** 18); while a judicial or discretionary office or duty involves the exercise of judgment

or discretion (*q. v.*) (As to the ministerial office of a coroner, *see* **CORONER**, § 1.) The phrase is often used in speaking of a delegation of authority; the general rule being that an executor, trustee, agent, &c., can delegate his authority so far as to empower another person to do a merely ministerial act for him, but not to empower another person to exercise a discretion vested in him (the executor, trustee, agent, &c.) Thus, an executor cannot (it is conceived) authorize another person to dispose of his testator's estate, or compromise claims by creditors; but if he has entered into an agreement for the sale of the property, or for the compromise of a claim, he may appoint another person to carry out the agreement by receiving or paying the money. *Id.* *See* **AGENCY**.

MINISTERIAL, (defined). 1 Am. L. J. 453.

MINISTERIAL ACT, (defined). 51 Ind. 376; 18 Am. Dec. 236 *n.*

— (what is). 23 Wend. (N. Y.) 324; 1 Wash. (Va.) 305, 306; 40 Wis. 175; 7 Wheel. Am. C. L. 144 *n.*

— (what is not). 2 Munf. (Va.) 492.

MINISTERIAL OFFICER, (defined). 2 Wheel. Cr. Cas. 559.

— (who is). 49 Ala. 311; 1 Dana (Ky.) 447; 3 Serg. & R. (Pa.) 29, 33; 1 Wils. 283; 1 Bl. Com. 354.

— (tenure of). 5 Serg. & R. (Pa.) 451; 7 Wheel. Am. C. L. 144.

MINISTERIAL POWERS. In English conveyancing law, these powers, as the name indicates, are given for the good, not of the donee himself exclusively, or of the donee himself necessarily at all, but for the good of several persons, including or not including the donee also. They are so called because the donee of them is as a *minister* or servant in his exercise of them. As to the ministerial powers of a tenant for life, *see* **Brown**.

MINISTERIAL TRUSTS. *See* **TRUST**.

MINISTRANT.—The party cross examining a witness under the old system of the ecclesiastical courts.

MINISTRI REGIS. Ministers of the king; applied to the judges of the realm, and to all those who hold ministerial offices in the government. 2 Inst. 208.

MINISTRY.—Office; service. Those members of the government who are in the cabinet. *See* **MINISTER**.

MINISTRY, THE, (in a grant to). 3 Pick. (Mass.) 168.

MINOR.—(1) An infant; a person who has not yet arrived at majority (*q. v.*) (2) Of less importance; lower. *See* CHILD; GUARDIAN; INFANT.

MINOR, (nature and extent of the paternal power). 1 Mas. (U. S.) 71.

— (enlistment of, without consent of parent). 9 Johns. (N. Y.) 239.

— (when may make contract to serve in navy). 4 Binn. (Pa.) 487.

— (in a statute). 10 Tex. App. 412; 11 Mass. 63, 67.

Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differetur usque ætatem; sed non cadit breve (2 Inst. 291): A minor before majority cannot act in a case of property, nor even agree; it should be deferred until majority; but the writ does not fail.

Minor jurare non potest (Co. Litt. 172b): A minor cannot swear. *Obsolete.*

Minor 17 annis, non admittitur fore executorem (6 Co. 68): A minor under seventeen years of age is not admitted to be an executor.

Minor minorem custodire non debet; alios enim præsumitur male regere qui seipsum regere nescit (Co. Litt. 88): A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself.

Minor non tenetur respondere durante minori ætate; nisi in causa dotis, propter favorem (3 Bulst. 143): A minor is not bound to reply during his minority, except as a matter of favor in a cause of dower.

Minor, qui infra ætatem 12 annorum fuerit, ultagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliqua, nec in decenna (Co. Litt. 128): A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because before such age he is not under any law, nor in a decennary.

MINORA REGALIA.—The lesser prerogatives of the crown, relating to the revenue.

MINORITY.—(1) The state of being under age, *i. e.* twenty-one years. (*See* FULL AGE; GUARDIAN; INFANT.) (2) The smaller number. The term is opposed to "majority" (*q. v.*) in both senses.

MINT.—

§ 1. The place where money is coined. *See* COIN; MASTER OF THE MINT.

§ 2. A place of privilege in Southwark, near the queen's prison, where persons formerly sheltered themselves from justice under the pretext that it was an ancient palace of the crown. The

privilege is now abolished, and the Stats. 8 and 9 Will. III. c. 27; 9 Geo. I. c. 28; 11 *Id.* 22, and 1 Geo. IV. c. 116, enact that persons opposing the execution of any process in such pretended privileged places within the bills of mortality, or abusing any officer in his endeavor to execute his duty therein, so that he receives bodily hurt; and all persons aiding and abetting such opposition shall be felons, and shall be punished accordingly.

MINT-MARK.—The masters and workers of the English mint, in the indentures made with them, agree "to make a privy mark in the money they make, of gold and silver, so that they may know which moneys were of their own making;" after every trial of the pix, having proved their moneys to be lawful they are entitled to their *quietus* under the great seal, and to be discharged from all suits or actions.

MINT-MASTER.—One who manages the coinage. *See* MASTER OF THE MINT.

MINTAGE.—That which is coined or stamped.

MINUTE.—(1) A measure of time equal to sixty seconds, or the sixtieth part of a degree or hour. (2) A memorandum. (3) Small.

MINUTE TITHES.—Small tithes, such as usually belong to a vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, &c.

MINUTES.—

§ 1. Notes or records of a transaction. Thus, the record of the proceedings at a meeting of directors or shareholders of a company is called the "minutes."

§ 2. **Agreed minutes of order, &c.**—When the parties to an action, petition, or other proceeding in the English Chancery Division, are agreed as to the order or judgment which should be made on an application to the court, they usually (especially if the matter is complicated) draw up beforehand minutes of the order or judgment (formerly called "minutes of decree"), containing in outline all the provisions which are thought necessary. The minutes are afterwards put into the form of an order by the registrar. *See* PASS; SETTLE.

§ 3. **Registrar's minutes.**—Formerly, in Chancery suits, when an order or decree had been made, the registrar did not draw it up in full in the first instance, but framed an outline giving the substance of the order, copies of which were delivered to the parties, to be settled by them in his presence, if necessary. For some time past the practice has been to draw up the order or decree complete in the first instance, and copies of the draft are delivered to the parties. In practice these copies are still called "minutes;" and when any dispute arises on the form of the order which has to be referred to the court, the cause is put into the paper "to be spoken to on the minutes." *Hunt. Suit 86. See* ENTER; PASS; SETTLE.

MIRROR DES JUSTICES.—This singular work has raised much doubt and difference of opinion concerning its antiquity. Some have pronounced it older than the Conquest, others have ascribed it to the time of Edward II. Both these opinions may be partly right. There may perhaps have been a work by this name as early as the first date supposed; but whoever judges from the internal evidence of this book will be satisfied that great part of it is of a period much later, and certainly written after Pleta and Britton; for it states many points of law, as it were, in a stage of progression somewhat receding from those writers, and approaching nearer to those of later times. It is probable that Andrew Horne, whose name it bears, might take up an ancient book of that name, and work it into the volume we now see, in the reign of Edward II., or at the end of the former reign; and if so, we should expect that whatever it propounds was actually law in the reign of Edward II. This book treats of all branches of the law, whether civil or criminal. Besides this, it gives a cursory retrospect of some changes ordained by former kings; enumerates a list of abuses, as the author terms them, of the common law, proposing, at the same time, what he considers to be desirable corrections. He does the same with Magna Charta, the Statutes of Merton and Marlbridge, and some principal acts in the reign of Edward I. This book should be read with great caution and some previous knowledge of the law as it stood about the same period, for the author certainly writes with very little precision. This, with his assertions about Alfred, and the extravagant punishments inflicted by that king on his judges, have brought his treatise under some suspicions. When read with these hints, *The Mirror of Justices* is certainly a curious, interesting, and, in some degree, an authentic tract upon the old law; though considering the anachronisms in legal knowledge (if they may be so called) with which it abounds, that the antiquated law is promiscuously blended with that of the time in which it was revised, and that the date of such revision is very uncertain, it is to be wondered that some great writers have relied so much upon this author, as to pronounce upon the antiquity of many articles of our law merely on his authority. (2 Reeves Hist. Eng. Law c. xii. 358.)—*Watson*.

MIS.—An inseparable particle used in composition, to mark an ill sense or depravation of the meaning, as miscomputation or misaccounting, *i. e.* false reckoning. Several of the words following are illustrations of the force of this monosyllable.—*Todd Johnson's Dict.*

MISA.—In old records, a compact; a firm peace.

MISADVENTURE, HOMICIDE BY.—See HOMICIDE, § 3.

MISALLEGH.—To cite falsely as a proof or argument.

MISAPPROPRIATION.—This is not a technical term of law, but it is sometimes applied to the misdemeanor which is committed by a banker, factor, agent, trustee, &c., who fraudulently deals with money, goods, securities, &c., entrusted to him, or by a director or public officer of a corporation or company who fraudulently misapplies any of its property. Steph. Cr. Dig. 257 *et seq.* See FRAUD, § 18; PUBLIC OFFICER.

MISAPPROPRIATION, (of commercial paper). 13 Vr. (N. J.) 179.

MISBEHAVIOR, (in a statute). 37 How. (N. Y.) Pr. 20; 10 Wend. (N. Y.) 589.

— (in answer to a bill for divorce). 2 Atk. 337.

MISBEHAVIOR IN OFFICE, (what is). 4 Hen. & M. (Va.) 522.

MISCARRIAGE.—

§ 1. **In criminal law.**—A woman who, being with child, unlawfully administers to herself any drug, or uses any other means to procure her own miscarriage, is guilty of felony, as is also any person who administers any drug or uses any other means to procure the miscarriage of a woman, whether she be with child or not. 4 Steph. Com. 83.

§ 2. **In statute of frauds.**—The original statute (29 Car. II. c. 3, § 4,) provides that "no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or *miscarriage* of another person, unless the agreement," etc., "shall be in writing," etc. The word "miscarriage," in this enactment, means such a wrongful act as the wrongdoer would be responsible for, at law, in a civil action.

MISCARRIAGE, (distinguished from "debt" and "default"). 2 Barn. & Ald. 613, 616.

— (in an indictment). 33 Me. 48, 60.

MISCHIEF.—This word is often used as signifying the evil or danger which a statute is meant to cure or avoid.

MISCHIEVOUSLY, (in an indictment). 2 Hawks (N. C.) 460.

MISCOGNIZANT.—Ignorant of; unacquainted with.

MISCONDUCT, (what is). 1 Den. (N. Y.) 267. — (in a statute). 37 How. (N. Y.) Pr. 20; 78 N. Y. 248.

MISCONDUCT IN OFFICE, (in a statute). 60 Me. 58.

MISCONTINUANCE.—Cessation; intermission; an improper continuance.

MISCREANT.—An apostate; an unbeliever; one who totally renounced Christianity. 4 Bl. Com. 44.

MISDEMEANOR.—

§ 1. Any crime or indictable offense not amounting to felony, such as perjury, battery, libel, conspiracy and public nuisances.

§ 2. At common law, misdemeanors are generally punishable by fine and imprisonment without hard labor. (Russ. Cr. & M. 187, 197; Steph. Cr. Dig. 14.) In many cases special punishments have been attached to misdemeanors by statute.

§ 3. **High misdemeanor**.—Under the Stat. 5 and 6 Vict. c. 51, whoever shoots or strikes at the queen, or does certain other acts with intent to alarm her, is guilty of a high misdemeanor, and is liable to be sentenced to seven years' penal servitude, or three years' imprisonment, with or without whipping.

MISDEMEANOR, (defined). 47 Cal. 477; 1 Chit. Gen. Pr. 14.

—(what is). 9 Wend. (N. Y.) 212, 222; 12 Ill. 314; 2 Phil. (Pa.) 337.

—(when act in furtherance of, is subject of indictment). 2 Ill. (N. Y.) 558.

—(in a statute). 12 Wend. (N. Y.) 346; 16 Id. 561; 21 Wis. 684; 4 Burr. 2540.

MISDESCRIPTION.—

§ 1. In certain cases, when a contract contains a material misdescription, *i. e.* when the description of the subject-matter of the contract is incorrect or misleading in a material and substantial point, the contract is voidable at the option of the party misled, independently of fraud, concealment, or misrepresentation (*q. v.*) Thus, in a contract of fire insurance, if the building is so described by the assured as to make the risk appear less than it really is, the insurer is entitled to avoid the contract. (*In re Universal, &c., Co., L. R. 19 Eq. 485; Lachlan v. Reynolds, Kay 52.*) So, in a sale of land, a misdescription materially affecting the value, title, or character of the property sold, will make the contract voidable at the purchaser's option. (*Flight v. Booth, 1 Bing. N. C. 870; Poll. Cont. 454.*) The test of materiality seems to be whether, if the subject-matter had been correctly described, the

party misled would have entered into the contract. *Ib.*

§ 2. A wrong description does not affect the validity of the transaction if there is no mistake as to the identity of the person or thing intended to be described, as where a person is called by a wrong name, according to the maxim *falsa demonstratio non nocet*.

MISDIRECTION.—An error in law made by a judge in charging a jury. This, if prejudicial to the losing party, is generally, and in criminal cases always, sufficient ground for a new trial. *See* NEW TRIAL; NON-DIRECTION.

MISE.—(1) In the obsolete writ of right (*q. v.*), "mise" was the same thing as the issue in an ordinary action, and was so called because the tenant put himself upon the grand assize, *i. e.* chose it as the mode of trial. (Co. Litt. 294 b; Britt. 266 b). (2) Disbursement; costs; (3) A tax or tollage, &c.

MISE-MONEY.—Money paid by way of contract or composition to purchase any liberty, &c.—*Blount*.

MISELLI.—Leprous persons.—*Cowell*.

Misera est servitus, ubi jus est vagum aut incertum (4 Inst. 245): It is a wretched state of slavery which subsists where the law is vague or uncertain.

MISERABILE DEPOSITUM.—In the civil law, an involuntary deposit under pressing necessity.

MISERERE.—Have mercy. The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of clergy: whence it is also called the psalm of mercy.—*Wharton*.

MISERICORDIA.—(1) An arbitrary amercement or punishment imposed on any person for an offense. It is thus called, according to Fitzherbert, because it ought to be small and less than that required by Magna Charta.—*Anc. Inst. Eng.* (2) A discharge of all manner of amercements, which a person might incur in the forest. *See* CAPIAS PRO FINE.

MISERICORDIA COMMUNIS.—A fine set on a whole county or hundred.

Misericordia domini regis est, qua quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contentenemento amittat (Co. Litt.): The mercy of our lord the king is that by which every one

is to be amerced by a jury of good men from his immediate neighborhood, lest he should lose any part of his own honorable tenement.

MISEVENIRE.—To fail or succeed ill.

MISFEASANCE — MISFEASOR.

—**NORMAN-FRENCH:** *mis*, wrongly, and *feve*, to do.

§ 1. Misfeasance is either the doing of a wrongful act or the improper performance of a lawful act: as where a person is guilty of negligence in performing a contract. Misfeasor is a person who does a misfeasance.

§ 2. In the old books, misfeasance was used especially to signify trespasses and other offenses in parks, forests, &c. (*See Stat 1 Westm. c. 19; 2 Inst. 198.*) At the present day it is chiefly used to signify negligence. (*Underh. Torts 27; 3 Steph. Com. 363.*) As to misfeasance by an officer of a company under § 165 of the *English Companies Act, 1862*, see *McKay's Case*, 2 Ch. D. 1; *Coventry and Dixon's Case*, 14 Ch. D. 660. *See MALFEASANCE; NONFEASANCE; TORT.*

MISFEASANCE, (defined). 1 Stew. (N. J.) 576.

—— (what is). 33 Conn. 109.

—— (in a statute). 104 Mass. 376.

MISJOINDER.—

§ 1. **Of parties.**—This is where persons are wrongly joined as plaintiffs or defendants in an action: in other words, where persons are made parties who ought not to be. The rule in England, before the *Judicature Acts*, was that in an action of contract a misjoinder of plaintiffs led only to increased costs, while a misjoinder of defendants was fatal; and that in an action of tort a misjoinder of plaintiffs or defendants led only to increased costs. (*Dic. Part. 502 et seq.*) No action can now be defeated by a misjoinder. *Rules of Court*, xvi. 18. *See JOINER.*

§ 2. **Of causes of action.**—The combining in one bill, declaration, complaint or petition of distinct demands, which, of right, ought to be the subjects of separate actions or suits. *See JOINER.*

MISKENNING.—A wrongful citation, or summoning to court.—*Du Cange; Anc. Inst. Eng.*

MISLEADING.—Calculated to deceive, or guide into error. Instructions to

the jury, which are so framed as to be misleading, are often good cause for reversal and new trial.

MISNOMER.—A wrong name. In real and mixed actions at common law a misnomer was a ground of abatement, but not in any personal action; but in all cases in which a misnomer would, but for the following act, have been pleadable in abatement, the defendant was at liberty to cause the declaration to be amended at the plaintiff's cost by inserting the right name. The remedy is now by amendment.

MISPLEADING.—Pleading incorrectly, or omitting anything in a pleading, which is essential to the maintenance or defense of an action; as in the case of a plaintiff not merely stating his title in a defective manner, but setting forth a title which is essentially defective in itself. Also, in Chancery suits, it is a mispleading in certain cases if the defendant does not allege the absence of notice.

MISPLEADING, (defined). 22 Wend. (N. Y.) 369, 375.

MISPRISION.—**OLD FRENCH:** *mes*, wrongly, and *prendre*, to take; to commit an error. *Litt. s. v. Meprendre; Shaks. Hen. IV. (1st part) l. 3.*

§ 1. Misprision, "in its larger sense, is used to signify every considerable misdemeanor which has not a certain name given to it by the law; and it is said that a misprision is contained in every treason or felony whatsoever, and that one who is guilty of felony or treason may be proceeded against for a misprision only." (1 *Russ. Cr. & M.* 187; *see Stauf. P. (1 & Pr. 37.)* The term is, however, rarely if ever used in this sense, it being now practically confined to the two phrases, misprision of treason and misprision of felony.

§ 2. **Of treason.**—Misprision of treason is where a person who knows that some other person has committed high treason does not within a reasonable time give information thereof to a judge of assize or justice of the peace. The punishment is imprisonment for life and forfeiture of the offender's goods, &c. *Steph. Cr. Dig.* 93.

§ 3. **Of felony.**—Misprision of felony is where a person who knows that some other person has committed felony conceals or procures the concealment thereof.

In ordinary cases the offense is a misdemeanor; if the offender is a sheriff or coroner, or the bailiff of either officer, a special punishment is inflicted. Steph. Cr. Dig. 93; Stat. 3 Edw. I. c. 9.

MISPRISION, (what is). 1 Hawk. P. C. ch. 20.
MISPRISION OF TREASON, (defined). 1 Hale P. C. 371.

MISRECITAL.—A wrong recital. If it is in the beginning of a deed, and does not go to the end, it will not hurt, but if it goes to the end of a sentence, so that the deed is limited by it, it is vicious. Cart. 143.

MISREPRESENTATION.—

§ 1. Misrepresentation is where one of the parties to an intended contract conveys to the other a false impression as to some matter relating to the contract, whether by an express statement (active) or by silence (passive).

§ 2. **False, or fraudulent.**—False or fraudulent misrepresentation is a representation contrary to the fact, made by a person with a knowledge of its falsehood, and being the cause of the other party's entering into the contract. *Attwood v. Small*, 6 Cl. & F. 232. *See* DOLUS DANS LOCUM CONTRACTUI; FRAUD.

§ 3. **Negligent misrepresentation** is a false representation made by a person who has no reasonable grounds for believing it to be true, though he does not know that it is untrue, or even believes it to be true. *Reese River Silver Mining Co. v. Smith*, L. R. 4 H. L. 79.

§ 4. **Innocent misrepresentation** is where the person making the representation had reasonable grounds for believing it to be true. *Kennedy v. Panama, & Co.*, L. R. 2 Q. B. 580.

§ 5. **Consequences of.**—When a person has been induced to enter into a contract by fraudulent or negligent misrepresentation, he may in general either (1) affirm the contract and insist on the misrepresentation being made good, if that is possible, so as to be put in the same position as if it had been originally true, or (2) rescind the contract (*see* RESCISSION), or (3) bring an action for damages (Poll. Cont. 482), or (4) rely upon the misrepresentation as a defense to an

action on the contract. *Hirschfeld v. L. B. & S. C. Rail. Co.*, 2 Q. B. D. 1.

§ 6. An innocent misrepresentation has no effect on the contract unless it produces mistake excluding the true consent, (*Kennedy v. Panama, & Co.*, *supra*; *Manson v. Thacker*, 7 Ch. D. 620,) (error *in substantiâ*, as to which, *see* MISTAKE, § 10); or unless it amounts to a warranty or condition, or unless the contract is one in which good faith is especially required, such as contracts of insurance and family settlements. *Fane v. Fane*, L. R. 20 Eq. 698; Poll. Cont. (2 edit.) 462.

MISREPRESENTATION, (defined). Baldw. (U. S.) 331, 337.

— (to avoid policy of insurance). 5 Cranch (U. S.) 100; 12 Cush. (Mass.) 416, 425; 16 Wend. (N. Y.) 488.

MISREPRESENTATION, ACTIONABLE, (defined). 2 Stew. (N. J.) 257, 262.

MISSA.—The mass.

MISSÆ PRESBYTER.—A priest in orders.—*Blount*.

MISSAL.—The mass-book.

MISSING SHIP.—A ship which has been at sea and unheard from for so long a time as to give rise to the presumption that she has perished with all on board.—*Bouvier*.

MISSISSIPPI CURRENCY, (in a note). 2 La. Ann. 404.

MISSIVES.—In the Scotch law, writings passed between parties as evidence of a transaction.—*Bell Dict.*

MISSTAIICUS.—In old records, a messenger.

MISSTATEMENT, (in conditions of sale of land). 1 Campb. 340; 1 Meriv. 26.

MISSURA.—The ceremonies used in the Romish Church to recommend and dismiss a dying person.

MISTAKE.—

§ 1. Although mistake and ignorance are, strictly speaking, not identical, the one being positive and the other negative, they are commonly used as convertible terms in law, their effects being identical. (8 Sav. Syst. 326; Ahr. Jur. Encycl. 618. *See, however*, Lord Chelmsford's remarks in *Beauchamp v. Winn*, L. R. 6 H. L. 230.) Mistake then may be defined as a mis-

apprehension as to the existence of a thing, arising either from ignorance in the strict sense, *i. e.* absence of knowledge on the subject, or from mistake in the strict sense, *i. e.* a false belief on the point.

§ 2. **Mistake per se.**—Where, however, mistake produces a legal effect, not of itself, but because it coincides with some other fact, the effect is not attributed to the mistake, but to the whole transaction. Thus, mistake is essential to the idea of fraud, because no one can be defrauded unless he is misled, and to many cases where negligence or *bona fides* is of importance; but no one would treat these subjects as instances of mistake. In practice, therefore, the term "mistake" is limited to cases where the effect produced is attributed to it alone. Sav. 340.

Mistake is either of law or of fact.

§ 3. **Mistake of law.**—Mistake of law (*error or ignorantia juris*) is a mistake as to a general rule of law: as where a testator thinks that to disinherit his heir it is necessary to give him a nominal bequest, or where a person does not know that a contract not to be performed within a year must be in writing. The general rule is that such a mistake does not affect the transaction, whether in civil or in criminal law. (Snell Eq. 345; 4 Bl. Com. 26; Poll. Cont. 308; for exceptions, *see Id.* 301.) Thus, in the first of the above cases the executor could not refuse to pay the bequest, and, in the second, the contract would be void for want of the formality of writing.

§ 4. **Mistake of fact.**—Mistake of fact (*error or ignorantia facti*) is either as to the existence of a fact or as to the existence of a right depending on questions of mixed law and fact. (3 Sav. 327, 338; Cooper v. Phibbs, L. R. 2 H. L. 149.) Thus, where A., believing that under a deed of grant he had merely a right of rabbit warren over certain land, entered into an agreement for an exchange of properties with a neighboring proprietor, who was also under the belief that A. was only entitled to the right of warren, but it was afterwards discovered that under the deed of grant A. was entitled to the land itself: it was held that the mistake was one of fact, and that, therefore, (under the rule stated

infra, § 10,) A. was entitled to have the agreement rescinded, although it had been partially carried out. (Beauchamp v. Winn, L. R. 6 H. L. 223. *See, also*, Daniell v. Sinclair (6 App. Cas. 181), where the court remarked that "in equity the line between mistakes in law and mistakes in fact has not been so clearly and sharply drawn" as at common law.) Questions of foreign law being questions of fact, a mistake as to foreign law is a mistake of fact. *See* FACT.

Mistake of fact is of two kinds, fundamental and collateral.

§ 5. **Fundamental mistake.**—A mistake is fundamental when it prevents an act from producing its legal effect, because it excludes the necessary intention. Such a mistake may be either unilateral or bilateral.

§ 6. **Unilateral.**—Instances of unilateral mistake excluding intention occur both in civil and criminal law. Thus, if A. signs a document by mistake, thinking it to be another document, his signature is ineffectual, because he did not intend to sign it. (Foster v. Mackinnon, L. R. 4 C. P. 704.) So if A. takes away a thing belonging to B., believing it to be his own, he does not commit a theft, because the necessary criminal intention is absent. 4 Bl. Com. 232.

§ 7. **Bilateral.**—Bilateral mistake excluding intention, occurs only in civil law. Thus, if A. and B. enter into a contract of sale for an estate called Dale, there being in fact two estates called Dale, A. meaning one and B. the other, the consent or common intention necessary to constitute a contract is absent, and there, therefore, is no contract (*error in corpore*). Raffles v. Wichelhouse, 2 Hurlst. & C. 906; 3 Sav. 272.

§ 8. **Collateral mistake.**—Collateral mistake is where the necessary intention is present, but it is induced or accompanied by a mistake. The mistake may be either unilateral or mutual.

§ 9. **Unilateral.**—As a general rule unilateral mistake has no legal effect at all. (Sav. 341; Poll. Cont. 358. For exceptions to the rule, *see Id.* 359.) Thus, if A. purchases property from B. under a mistaken belief as to its qualities, he can-

not set aside the sale or recover damages from B. on the ground of his mistake, unless there was misrepresentation or a guaranty on the part of B. (Poll. Cont. (2 edit.) 420.) The principal exception to the rule is that if money is paid under a mistake of fact it may be recovered back. *Id.* 397. As to collateral mistake in criminal law, *see* Reg. v. Prince, L. R. 2 C. C. R. 154.

§ 10. **Mutual mistake**—Error in **substantia**.—Mutual mistake is where the parties have a common intention, but it is induced by a common or mutual mistake. The most important instance of this kind is where there is a common mistake as to the substance of the thing (*error in substantiâ*). Thus, if A. and B. enter into a contract of sale for a vessel, each believing it to be of gold, while it is in fact of brass, either may rescind the contract. *Gompertz v. Bartlett*, 2 El. & B. 849; *Cox v. Prentice*, 3 Man. & Sel. 344; *Kennedy v. Panama, &c., Co.*, L. R. 2 Q. B. 580; 3 Sav. 276 *et seq.* For another example, *see* above, § 4.

§ 11. **Mistake in expression**.—Again, if a mistake occurs in expressing the terms of an agreement, it will, as a general rule, be corrected, either when proceedings are taken to enforce it or by substantive proceedings taken for the purpose. (*See* RECTIFICATION.) The most obvious example is that of clerical errors made in reducing a contract to writing. Poll. Cont. 406.

MISTAKE, (in a statute). 51 Me. 78; 46 Wis. 118.

—— (in a will). 8 Jur. 166; 3 Hare 265; 13 L. J. N. S. 130.

MISTAKE OR IGNORANCE, (in a statute). 1 Dowl. & Ry. 539.

MISTERY.—A trade or calling.—*Cowell. See* ADDITION.

MISTRESS.—The proper style of the wife of an esquire or a gentleman in England.

MISTRIAL.—An erroneous trial.

MISUSE, ABUSE AND ILL-TREAT, (include acts injurious to the mind and morals). 1 Browne (Pa.) 29.

MISUSER.—Abuse of any liberty or benefit which works a forfeiture of it.

Misuser, (what is). 23 Wend. (N. Y.) 193.

MITIGATION—Where a defendant or prisoner whose responsibility or guilt is not in dispute proves facts tending to reduce the damages or punishment to be awarded against him, he is said to show facts in mitigation of damages, or of sentence, as the case may be. Thus, the defendant in an action of seduction may prove the bad character of the woman in mitigation of damages. Underh. Torts 157.

MITIOR SENSUS.—The more favorable acceptance.

Mitius imperanti melius paretur (3 Inst. 24): He is better obeyed who commands leniently.

MITTENDO MANUSCRIPTUM PEDIS FINIS.—An abolished judicial writ addressed to the treasurer and chamberlain of the Exchequer, to search for and transmit the foot of a fine acknowledged before justices in eyre, into the Common Pleas. *Reg. Orig.* 14.

MITTER LE DROIT—MITTER L' ESTATE.—*See* RELEASE.

MITTIMUS—We send.

§ 1. **In English law**.—A writ used in sending a record or its tenor from one court to another. Thus, where a *nul tiel record* is pleaded in one court to the record of another court of equal or superior jurisdiction, the tenor of the record is brought into Chancery by a *certiorari* (*q. v.*), and thence sent by *mittimus* into the court where the action is. (Tidd 745.) It is apprehended that since the Judicature Acts this writ will not be much used in England.

§ 2. **In criminal law**.—A precept or warrant for the committal to jail of a person accused of a crime in a case where bail is not allowed or is not given; a commitment.

MITTIMUS, (defined). 112 Mass. 62.

MITTRE A LARGE.—To set or put at liberty.

MIXED ACTION.—*See* ACTION, § 15.

MIXED ACTIONS, (what are). 48 Me. 255.

MIXED CONTRACT.—In the civil law, one in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given; as a legacy charged with something of less value than the legacy itself.

MIXED FUND.—*See* BLENDED FUND.

MIXED GOVERNMENT.—A form of government, combining monarchy,

aristocracy and democracy, like that of the British Empire.

MIXED LARCENY.—Otherwise called "compound" or "complicated larceny," that which is combined with circumstances of aggravation or violence to the person, or taking from a house. *See* LARCENY.

MIXED LAWS.—Those which concern both persons and property.

MIXED LIQUORS, (defined). 3 Harr. (N. J.) 321.

MIXED PERSONALTY.—Impure personality. *See* ABATEMENT, § 4; CHARITY; PERSONALTY.

MIXED PRESUMPTIONS.—Presumptions of mixed law and fact, *i. e.* presumptions of fact recognized by law, *e. g.* presumptions which juries are commonly recommended to draw as inferences from the facts that are proved.

MIXED PROPERTY.—A compound of realty and personality.

MIXED PROPERTY, (defined). 2 Steph. Com. 214.

— (in a will). 106 Mass. 585.

MIXED QUESTIONS.—(1) Those which arise from the conflict of foreign and domestic laws; (2) questions arising on a trial involving both law and fact. *See* FACT, § 3.

MIXED SUBJECTS OF PROPERTY.—Such as fall within the definition of things real, but which are attended nevertheless with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings, connected with land. Besides these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals *feræ naturæ*, charters and deeds, court rolls, and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armor, with pennons and other ensigns, and especially heirlooms.—*Wharton*.

MIXED TITHES.—Tithes of wool, milk, pigs, &c., consisting of natural products, but nur-

tured and preserved in part by the care of man. *See* Com. Dig. "Dismes"; also, 2 Inst. 649.

MIXED WAR, (defined). 1 Hill (N. Y.) 377, 415.

MIXING TRUST FUNDS, (by trustee). 2 Myl. & K. 655.

MIXTION.—Confusion of goods (*q. v.*)

MIXTUM.—A breakfast, or a certain quantity of bread and wine.—*Cowell*.

MIXTUM IMPERIUM.—Mixed authority; a kind of civil power. A term applied by Lord Hale to the power of certain subordinate civil magistrates, as distinct from jurisdiction. (Hale Anal. § 11.)—*Burrill*.

MOB.—An assemblage of many people, acting in a tumultuous and riotous manner, calculated to put good citizens in fear, and endanger their persons and property.

MOBILIA.—Movables (*q. v.*)

Mobilia sequuntur personam (Story Conf. L. § 378): Movables follow the person.

MOBLES.—Movable goods; furniture. Obsolete.

MOCKADOES.—A kind of cloth made in England, mentioned in Stat. 23 Eliz. c. 9.

MODEL.—A representation or copy of a thing. A *fac simile* of something invented, made on a reduced scale, in compliance with the patent laws.

MODERAMEN INCULPATÆ TUTELÆ.—In the Roman law, the regulation of justifiable defense. The term expresses that degree of force which a person might lawfully use in defense of his person or property, even though it should occasion the death of the aggressor.—*Calv. Lex; Bell Dict.*

MODERATA MISERICORDIA.—*See* DE MODERATA, &c.

MODERATE CASTIGAVIT.—He moderately corrected. A plea of justification in an action for assault and battery. *See* MODERATE MANUS IMPOSIT.

MODERATOR.—A president or chairman of a public meeting, *e. g.* a church meeting, or town meeting in New England.

MODES OF PROCEEDING, (in act of congress). 1 How. (U. S.) 301, 306; 14 Pet. (U. S.) 301, 316; 16 Id. 303, 313; 17 Id. 201.

MODES OF PROCEED. (in act of congress). 9 Pet. (U. S.) 329, 356; 10 Wheat. (U. S.) 1, 20.

MODIATIO.—A certain duty paid for every tierce of wine. Mon. Ang. t. li. p. 194.

MODIFICATION.—

§ 1. **Of contract.**—Change. Thus, where parties to a contract, either at the time of making it, by inserting a condition subsequent having that effect, or after its execution, by mutual consent, alter its provisions, this is called a “modification of the contract.”

§ 2. **In Scotch law.**—The term usually applied to the decree of the Teind Court, awarding a suitable stipend to the minister of a parish. *Bell Dict.*

MODIUS.—A measure; usually a bushel.

MODIUS TERRÆVEL AGRI.—A quantity of ground containing in length and breadth one hundred feet. *Mon. Ang.* iii. 200.

MODO ET FORMA.—In manner and form. A phrase formerly used in pleading. It was the nature of a traverse to deny the matter of fact in the adverse pleading in the *manner and form* in which it was alleged, and, therefore, to put the opposite party to prove it to be true in *manner and form* as well as in general effect. The plea of *non est factum*, and the replication *de injuriâ*, were the only negative traverses not pleaded *modo et forma*. These words were in no case strictly essential, so as to render their omission a cause of demurrer.—*Wharton*.

MODUS.—Custom; manner; means; way.

Modus de non decimando non valet.
—An agreement not to take tithes avails not.

MODUS DECIMANDI.—Is where there exists by custom a particular manner of tithing, *i. e.* of paying tithes, different from the general rule. This is sometimes a pecuniary compensation, such as twopence an acre for the tithe of land; sometimes it is a compensation in work and labor, as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him, or the like. (2 Bl. Com. 29; Phillim. *Ecc. L.* 1502; Stat. 2 and 3 Will. IV. c. 100, fixing the time for claiming a modus by prescription.) Moduses are within the Tithe Commutation Acts, and have probably been commuted in most if not in all cases. *See* TITHES; *DE NON DECIMANDO*; *COMPOSITION*, § 5.

Modus et conventio vincunt legem (2 Co. 73): Custom and agreement overrule law. This maxim forms one of the first principles relative to the law of contracts. The exceptions to the rule here laid down are in cases against public policy, morality, &c.

MODUS HABILIS.—A valid manner.

Modus legem dat donationi (Co. Litt. 19): Custom gives law to the gift.

MODUS LEVANDI FINES.—The Stat. 18 Edw. I. 1 Steph. Com. (7 edit.) 560.

MODUS TENENDI.—The manner of holding, *i. e.* the different species of tenures by which estates are held.

MODUS TRANSFERRENDI.—The manner of transferring.

MOERDA.—The secret killing of another; murder. 4 Bl. Com. 194.

MOHATRA.—In the French law, a fraudulent contract to screen usury.—*Wharton*.

MOIDORE.—A gold coin of Portugal, value twenty-seven English shillings.

MOIETY.—This word is used in the old books in the sense of “half.” “If a joynt estate be made of land to a husband and wife, and to a third person, in this case the husband and wife have in law in their right but the moiety, and the third person shall have as much as the husband and wife, viz., the other moiety. And the cause is, for that the husband and wife are but one person in law.” (Litt. § 291.) The word is, however, frequently, but inaccurately, used to signify any equal part, such as a third, fourth, &c.

MOIETY, (defined). 6 Mod. 231.
— (in a deed). 5 Taunt. 257.

MOLENDINUM.—In old records, a mill.

MOLENDUM.—A grist; a certain quantity of corn sent to a mill to be ground.

MOLEST, (in a devise). 2 Mod. 7.

MOLESTATION.—

§ 1. **In English law.**—Molesting a person by following him in a persistent or disorderly manner, or by hiding his property, or by besetting his place of work or residence, with the view of compelling him to do, or abstain from doing, an act, is forbidden by Stat. 38 and 39 Vict. c. 86, repealing Stat. 34 and 35 Vict. c. 82. The term “molestation” was used in the latter act, but is omitted from the former. *See* INTIMIDATION; *TRADES UNIONS*.

§ 2. **In Scotch law.**—The name of an action for disturbance of the possession of land. *See* DISTURBANCE, §§ 1, 3.

MOLESTED, (in a note). 1 Root (Conn.) 400.

MOLITURA, or **MOLTA.**—The toll or multure paid for grinding corn at a mill.—*Cowell*.

MOLITURA LIBERA.—A free grinding or liberty of a mill without paying toll.—*Par. Antiq.* 236.

MOLLITER MANUS IMPOSUIT.
—This is the compendious name for the de-

fense set up to an action for assault and battery, where the defendant alleges that the battery complained of was lawful, and that he "laid hands on the defendant gently," *i. e.* used no more force than was necessary; as where a churchwarden turns a man out of church to prevent him from disturbing the congregation. 3 Steph. Com. 375. See JUSTIFICATION.

MOLMAN.—In old records, a man subject to do service.

MOLMUTIAN, or MOLMUTIN LAWS.—The laws of Dunvallo Molmutius, sixteenth king of the Britons, who reigned above four hundred years before the birth of Christ. They obtained in England until the reign of the Conqueror. These were the first published laws in Britain; and together with those of Queen Mercia, were translated by Gildas into Latin. (Usher Primord. 126)—*Wharton*.

MOLNEDA—MULNEDA.—A mill: and or pond. *Pur. Antiq.* 135.

MOLTA.—See **MOLITURA**.

MOLTURA.—See **MOLITURA**.

MONA.—A name for the Isle of Anglesea or the Isle of Man—perhaps for both.—*Wharton*.

MONACHISM.—The state of monks.—*Milt. Hist. Eng.; Bingham. Christ. Antiq.*

MONARCHY.—**GREEK:** *μοναρχος*.

A government in which the supreme power is vested in a single person. Where a monarch is invested with absolute power, the monarchy is termed despotic; where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a limited monarchy. It is hereditary, where the regal power descends immediately from the possessor to the next heir by blood, as in England; or elective, as was formerly the case in Poland.—*Wharton*.

MONASTERIUM.—A monastery; a church.—*Sprk. Gloss.*

MONASTICON.—A book giving an account of monasteries, convents and religious houses.

MONETA.—Money (*q. v.*)

Moneta est justum medium et mensura rerum commutabilium, nam per medium monetæ fit omnium rerum conveniens et justa æstimatio (Dav.

18): Money is the just medium and measure of commutable things, for by the medium of money a convenient and just estimation of all things is made.

MONETAGIUM, MONYA, or MONEYAGE.—Called also *foecagium*, a certain tribute formerly paid by tenants to their lord every third year, that he should not change the money which he had coined, when it was lawful for certain great men to coin money, but not of silver and gold, in their territories. Abrogated by Stat. 1 Hen. I. c. 2. (Hale Hist. Eng. L. 217) Also, a mintage, and the right of coining or minting money.—*Wharton*.

Monetandi jus comprehenditur in regalibus quæ nunquam a regio sceptro abdicantur (Dav. 18): The right of coining money is included in those rights of royalty which are never separated from the kingly sceptre.

MONEY.—"The name given to the commodity adopted to serve as the *mar-chandise bannale*, or universal equivalent of all other commodities; and for which individuals readily exchange their surplus products or services."—*Brande*.

The materials of which it is now usually made are gold, silver, or other metal, and paper; its currency and the intrinsic or denominated value put upon it are by virtue of the prerogative of the sovereign. It may be said that the substitution of paper for gold or silver replaces a very expensive medium of commerce by one much less costly, and sometimes more convenient, the expediency and operation of which substitution belongs to the political economy of a State. See CASH; CURRENCY; EARMARK; GOODS; SPECIE; TENDER.

MONEY, (defined). 5 Humph. (Tenn.) 140; 44 Tex. 620; 45 *Id.* 305; 2 Wheel. Cr. Cas. 620; 2 Wheel. Am. C. L. 177.

— (in technical sense). 2 Dana (Ky.) 298.

— (what is). 1 Hannum. (Ohio) 178; 2 Nott. & M. (S. C.) 519; 4 Esp. 267; 5 Com. Dig. 158.

— (distinguished from "currency"). 2 Dav. (Ky.) 33; 4 B. Mon. (Ky.) 547; 2 J. J. Marsh. (Ky.) 464.

— (when means "currency of the union"). 3 Litt. (Ky.) 245.

— (synonymous with "coined metal"). 45 Tex. 305.

— (when bank notes are). 4 N. H. 198, 201; 5 Gill & J. (Md.) 54; 15 Pick. (Mass.) 173; 1 Ohio 189, 524.

— (when bank notes are not). 2 Harr. (Del.) 235, 252; 1 Halst. (N. J.) 222, 226; South. (N. J.) 58; 13 Wend. (N. Y.) 107.

— (depreciated bank paper is not). 1 J. J. Marsh. (Ky.) 49.

MONEY, (includes goods and chattels). 2 Wend. (N. Y.) 339; 12 Wend. (N. Y.) 386.

— (paper currency is not). 1 McCord (S. C.) 115.

— (stock is not). 7 Com. Dig. 373.

— (table fees or drinks are, within penal statutes). 3 Tex. App. 675, 676.

— (treasury notes are not). 3 Conn. 534.

— (in a deed). 2 East 137.

— (in annuity act). 3 T. R. 554; 6 Id. 333.

— (in a statute). 19 Johns. (N. Y.) 145.

— (in a will). 48 Cal. 165; 17 Am.

Rep. 422; 4 B. Mon. (Ky.) 549; 1 Mete. (Mass.) 446; 14 Johns. (N. Y.) 1; 1 Johns. (N. Y.) Ch. 231; 1 Grant (Pa.) Cas. 158; 31 Tex. 10; 51 Wis. 60; 3 Harr. Dig. 2213; 1 Atk. 508; 20 Beav. 221; 26 Id. 452; 34 Id. 490; 2 Dru. & W. 51; 4 Kay & J. 436; 2 Keen 14; L. R. 4 Ch. 574; L. R. 11 Eq. 232; 16 Id. 475; 3 Myl. & C. 661; 1 Myl. & K. 56; 1 P. Wms. 540; 4 Russ. 360; 1 Turn. & R. 260, 272; 11 Ves. 504; 15 Id. 320, 326; Jarm. Wills ch. 24; 2 Redf. Wills (2 edit.) 111, 437 n.; 2 Wms. Ex. 1025.

— (when may be taken in execution). 1 Cranch (U. S.) 116, 133; 1 Harr. (N. J.) 305; 12 Johns. (N. Y.) 220 395.

— (when cannot be taken in execution). 9 East 48.

MONEY, ALL HIS READY, (in a will). 3 Jones & La T. 565.

MONEY, ALL MY, (in a will). 8 C. E. Gr. (N. J.) 229.

MONEY, ALL MY READY, (in a will). 7 Jur. 457.

MONEY, ALL THE REST OF HIS, (in a will). 1 Chit. Gen. Pr. 91, 297 n.

MONEY, ALL THE REST OF HIS READY, (in a will). 1 Younge & Coll. C. C. 290.

MONEY AND LANDS, (in a will). 12 Ves. 161.

MONEY AND STOCK, (will not pass by a grant of goods and chattels). 5 Price 217.

MONEY-BILL.—

§ 1. In parliamentary language an act by which money is directed to be raised from the people, for any purpose or in any shape whatsoever, either for governmental purposes, and collected from the whole community generally, or for the benefit of a particular district, and collected in that district, as parish rates.

§ 2. With respect to these bills, in England, the House of Commons are so reasonably jealous of their privilege of imposing new taxes upon the subject, that they will not suffer the House of Lords to exert any other power but that of rejection; they will not pass a money-bill introduced in the House of Lords, nor permit the least alteration or amendment to be made by the House of Lords in the

mode of taxing the people by bills of this nature. See 1 Bl. Com. 170, 184.

§ 3. The constitution of the United States provides that "all bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills;" but the term "appropriation bill" is the more common one for this class of statutes. See APPROPRIATION, § 6.

MONEY-BILL, (defined). 126 Mass. 549, 557 *et seq.*

— (what is). May Parl. Pr. ch. 22.

MONEY-BROKER.—A money-changer; a scrivener or jobber; one who lends or raises money to or for others.

MONEY CLAIMS.—See MONEY COUNTS.

MONEY COUNTS.—Simple contracts, express or implied, resulting in mere debts, are of so frequent occurrence as causes of action, that certain concise forms of counts were devised for suing upon them. These are called the "*indebitatus*" or "money counts." See COMMON COUNTS; COUNT, § 2.

MONEY, CURRENT, (not synonymous with "currency") 3 T. B. Mon. (Ky.) 166.

MONEY, CURRENT LAWFUL, (in a statute). 1 Dall. (U. S.) 175.

MONEY DEMANDS.—Such demands as are certain beforehand, or ascertainable by calculation, without the intervention of a jury; and, as being such, are usually contradistinguished from *damages*.

MONEY DEPOSITED IN COURT, (in a statute). 2 Gall. (U. S.) 146.

MONEY DUE AT MY DECEASE, (in a will). L. R. 17 Eq. 76.

MONEY HAD AND RECEIVED.—**MONEY PAID.**—See CONTRACT, §§ 6, 8; QUASI CONTRACT.

MONEY LAND.—In equity, land article^d or devised to be sold, and turned into money, is considered as money; and money article^d or bequeathed to be invested in land, has, in equity, many of the qualities of real estate, and is descendible and devisable as such according to the rules of inheritance in other cases, and this upon the ground that equity regards substance and not form, and will further the intention of parties. See CONVERSION, §§ 1-6; LAND.

MONEY, LOAN OF, (loan of a check is). 3 Wend. (N. Y.) 302.
MONEY LOANED, (what is not). 34 Mich. 490.

MONEY OF ADIEU.—In the French law, earnest money. It was so called because given at parting in completion of the bargain. Poth. Sale 507.

MONEY OF THE UNITED STATES, (what is). 3 Cranch (U. S.) C. C. 441, 453.

MONEY OUT AT INTEREST, (in a statute). 6 East 182.

MONEY, READY, (in a will). 9 Ir. Eq. 398; 1 Phillim. 356, 360.

MONEY RECEIVED TO HIS USE, (what is). 1 Str. 407.

MONEY WHICH HE MIGHT HAVE IN THE BANK OF ENGLAND, (in a will). 5 Beav. 158.

MONEYAGE.—See **MONETAGIUM**.

MONEYED DEMAND, (in a statute). 58 Ala. 458.

MONEYS, (distinguished from "personal property"). 2 McCart. (N. J.) 108.

— (in a will). 9 Barb. (N. Y.) 35; 4 Jones (N. C.) Eq. 244; 31 Eng. L. & Eq. 452; L. R. 12 Eq. 455.

MONEYS EXPENDED, (defined). 19 Me. 394.

MONEYS LEFT AFTER MY DECEASE, (in a will). 8 Ch. D. 789.

MONGER.—(1) A dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such commodity. (2) A little fishing vessel. Stat. 13 Eliz. c. 11.

MONIERS, or MONEYERS.—Ministers of the mint; also, bankers.—*Cowell*.

MONIMENT.—A memorial, superscription, or record.

MONITION.—

§ 1. **Admiralty**.—In admiralty practice, a monition is a formal order of the court commanding something to be done by the person to whom it is directed, (Wms. & B. Adm. 297,) and who is called the person monished. Thus, when money is decreed to be paid, a monition may be obtained commanding its payment. (*Id.*) A monition is granted either on motion or on application in chambers, and, if not obeyed, may be enforced by attachment (*q. v.*) *Id.* 298.

§ 2. **Monition for process**.—In ecclesiastical appeals to the privy council (and formerly also in admiralty appeals), as soon as the petition of appeal is lodged, a "monition for process" issues, calling upon the judge and officers of the court below to transmit the proceedings in the cause to the registry of the Court of Appeal. *Id.* 314; Macph Jud. Com. 175 See **PROCESS**.

§ 3. **Monitions in divorce practice** are now disused, orders having taken their place. Browne Div. 254.

§ 4. **Ecclesiastical law**.—In ecclesiastical procedure, a monition is an order monishing or warning the party complained against to do or not to do a certain act "under pain of the law and contempt thereof." Thus, there may be a monition for personal answers, for payment of costs, requiring a clergyman to reside, &c. (Phillim. Ecc. L. 1257.) A monition may also be appended to a sentence inflicting a punishment for a past offense: in that case the monition forbids the repetition of the offense. See *Martin v. Macknochie*, 3 Q. B. D. 730; 4 Q. B. D. 697. See **ADMONITION**.

MONITION, (in ecclesiastical law). 6 App. Cas. 437.

MONITORY LETTERS.—Communications of warning and admonition sent from an ecclesiastical judge, upon information of scandal and abuses within the cognizance of his court.—*Wharton*.

MONOCRACY.—A government by one person.

MONOGAMY.—Marriage of one husband to one wife.

MONOMACHY.—A duel; a single combat. It was anciently allowed by law, for the trial of proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil and canon laws. See **BATTLE**.

MONOMANIA.—Insanity upon a particular subject. See **MENTAL ALIENATION**.

Monopolia dicitur, cum unus solus aliquod genus mercaturæ universam emit, pretium ad suum libitum statuens (11 Co. 86): It is said to be a monopoly when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.

MONOPOLIES, STATUTE OF.—The Stat. 21 Jac. I. c. 8.

MONOPOLY.—

§ 1. A license or privilege allowed by the sovereign for the sole buying and selling, making, working, or using of anything whatsoever. Monopolies were made illegal by Stat. 21 Jac. I. c. 8, except in the case of patents for new inventions and a few other instances. See **PATENT**.

§ 2. The popular meaning of "monopoly" at the present day seems to be, the sole power (or a power largely in excess of that possessed by others) of dealing in some particular commodity, or at some particular place or market; or of carrying

on some particular business. It is generally obtained by engrossing the market or the getting up of a "corner" in the thing proposed to be made the subject-matter of the monopoly. See CORNER; ENGROSS, § 3.

MONOPOLY, (defined). 11 Pet. (U.S.) 420, 567; 25 Conn. 38.

— (what is not). 5 Heisk. (Tenn.) 475.

MONSTER.—In the technical sense, a "monster" is a child "which hath not the shape of mankind." (Co. Litt. 7b; "*non humanæ figuræ, sed alterius, magis animalis quam hominis.*" Dig. L. 16 fr. 135.) It cannot inherit or purchase land (Co. Litt. 7b, 3b); and, therefore, the birth of a monster does not entitle a husband to curtesy. (*Id.* 29b) As to the rules of the Roman law, see Dig. I. 5. fr. 14; L. 16 fr. 135; 2 Sav. Syst. 9.

MONSTRANS DE DROIT.—The remedy which a subject has when the crown is in possession of property belonging to him, and title of the crown appears from facts set forth upon record. In such a case the claimant may present a *monstrans de droit* ("manifestation of right"), either showing that upon the facts as recorded he is entitled to the property, or setting forth new facts showing that he is entitled. Thus, if A. disseises B. of land and then dies without heirs, whereupon the land is adjudged to the crown by inquest of office (*q. v.*), here the crown's title appears upon record, and B.'s remedy is therefore by *monstrans de droit*, setting forth his disseisin by A. 3 Steph. Com. 656; Man. Exch. Pr. 86; Stat. 36 Edw. III. c. 13. See OUSTERLEMAIN; PETITION OF RIGHT; TRAVEISE.

MONSTRANS DE FAITS OU RECORDS.—Showing of deeds or records. Upon an action brought upon an obligation, after the plaintiff had declared he ought to have shown his obligation, and so also of records. *Monstrans de faits* differed from *oyer de faits* in that he who pleaded the deed or record, or declared upon it, ought to have shown it, and the defendant might demand *oyer* of the same.—*Cowell*.

MONSTRAVERUNT—A writ which lay for tenants in ancient demesne who held lands by free charter, when they were distrained to do unto their lords other services and customs than they or their ancestors used to do. It is, however, abolished.—*Wharton*.

MONSTRUM.—A box in which relics are kept; also, a muster of soldiers.—*Cowell*.

MONTESQUIEU.—Charles de Sécondat, Baron de la Brède et de Montesquieu, was born 1st January, 1689, and died 10th

February, 1755. He wrote *L'Esprit des Loix*, and various historical and other works.—*Holtz. Encycl.*

MONTHS.—The first subdivision of a year. Months are either lunar, consisting of twenty-eight days, and of which thirteen make a year: or calendar, which are of unequal length according to the almanac or common calendar, and of which twelve make a year. By the common law, a "month" means, in matters temporal, a lunar month: in matters ecclesiastical, a calendar month; (1 Steph. Com. 283;) but in acts of parliament, "month" means calendar month. Stat. 13 and 14 Vict. c. 21, § 4; see *Migotti v. Colville*, 4 C. P. D. 233. See the references given below.

MONTH, (defined). 21 Cal. 392; 32 *Id.* 347; 4 Bibb (Ky.) 105.

— (when means calendar month). 4 Bibb (Ky.) 104; 6 Serg. & R. (Pa.) 539; 8 Wheel. Am. C. L. 145; 12 N. Y. Week. Dig. 545; Cro. Jac. 141; 1 Chit. Bills 373; 13 and 14 Vict. c. 21, § 4.

— (when means lunar month). 2 Harr. (Del.) 548; 8 Cow. (N. Y.) 260; 15 Johns. (N. Y.) 119; 3 Johns. (N. Y.) Ch. 74; 4 Wend. (N. Y.) 512; 1 W. Bl. 450; 3 Burr. 1455; Cro. Jac. 166; Doug. 463; Chit. Bills 373; 1 Chit. Gen. Pr. 775; 2 *Id.* 147, 148; 1 Com. Dig. 628.

— (in an agreement). 6 Moo. 483.

— (in a charter party). 1 Esp. 186.

— (in a contract or deed). 2 Wall. (U. S.) 177.

— (in commercial instruments, &c.) 1 Johns. (N. Y.) Cas. 99; 6 Pa. 179.

— (in mercantile contracts). 2 Mass. 170 n.; 4 *Id.* 460.

— (in an obligation). 4 Bibb (Ky.) 104, 6 Serg. & R. (Pa.) 539.

— (in a patent). 2 Campb. 294.

— (in general railroad law, section 8). 16 Ind. 275.

— (in act of 1843). 21 Ala. 42.

— (in a statute). 2 Dall. (U. S.) 302; 4

Id. 143; 31 Cal. 173; 5 Conn. 357, 360; 2 A.

K. Marsh. (Ky.) 245; 3 J. J. Marsh. (Ky.)

638; 7 *Id.* 202; 2 Mass. 170; 4 *Id.* 460, 461; 19

Pick. (Mass.) 532; 37 Miss. 567; 3 Halst. (N.

J.) 232; 1 Cow. (N. Y.) 482 n.; 2 *Id.* 518; 1

Johns. (N. Y.) Cas. 200; 3 Serg. & R. (Pa.)

169; 10 Wend. (N. Y.) 395; 1 Bail. (N. C.)

611; Treadw. (S. C.) 606; 2 Vt. 138; 5 Gratt.

(Va.) 285; 3 Atk. 346; 1 Bing. 307, 310; 2

Dowl. & Ry. 727; 2 East 333; 3 *Id.* 407; 1

Esp. 246; 5 *Id.* 169; 6 Man. & Sel. 227; 4 Moo.

465; 1 Saund. 251 n.; 2 Sch. & L. 521; 3 T. R.

623; 6 *Id.* 224; 15 Ves. 248.

MONTH AFTER RETURN DAY, FOR THE SPACE

OF ONE, (equivalent to "one month from the

return day"). 7 T. B. Mon. (Ky.) 520.

MONTH NEXT FOLLOWING, WITHIN ONE, (in

a covenant). 4 Mod. 187, 186.

MONTH'S NOTICE, (what is). 2 Abb. (N. Y.) Pr 28.

MONTHS, (in act of 1790, ch. 101). 17 Md. 260.

— (in a statute). 2 Root (Conn.) 380.

MONTHS, IN ABOUT THREE, (in a letter). 2 Marsh 41.

MONTHS, SIX, (in bank charter). 3 Cranch (U. S.) C. C. 218.

— (in a statute). 4 Mod. 95, 96.

MONTHS, WITHIN THREE, (in a statute). 1 Barn. & C. 500, 502.

MONTHS, WITHIN TWELVE CALENDAR, (in a covenant). 3 Brod. & B. 186, 187.

MONUMENT.—(1) An erection in some public place, intended to preserve and perpetuate the memory of some one deceased; (2) a landmark permanently fixed for the more easy ascertainment of boundaries.

Monumenta quæ nos recorda. vocamus sunt veritatis et vetustatis vestigia (Co. Litt. 118): Monuments, which we call records, are the vestiges of truth and antiquity.

MONYA.—See **MONETAGIUM**.

MOOR.—An officer in the Isle of Man, who summons the courts for the several sheadings. The office is similar to the English bailiff of a hundred.

MOOT COURT—MOOT CASE.—See **MOOTS**.

MOOT HALL, or MOOT HOUSE.—A council-chamber; hall of judgment; town-hall.

MOOT HILLS.—Hills of meeting, on which the early ancestors of the English held their great courts. Many of these still exist not only in the British dominions, but also in the Netherlands. They commonly consist of a central eminence, on which sat the judge and his assistants; beneath was an elevated platform for the parties, their friends, and "compurgators," who sometimes amounted to one hundred, or more; and this platform was surrounded with a bench to secure it from the access of the spectators.—*Encycl. Lond.*

MOOT MAN.—One of those who used to argue the reader's cases in the Inns of Court. See **MOOTS**.

MOOTA CANUM.—A pack of dogs.—*Cowell*.

MOOTING.—The chief exercise formerly performed by students in the Inns of Court.

MOOTS.—Exercises in pleading, and in arguing doubtful cases and questions, by the students of an inn of court or law

school, (*q. v.*) before the benchers of the inn or professors of the school. See *Man. S. ad L. 262*; *Reeves Hist. Eng. Law 247*.

MORA.—(1) In old English law, a moor; marsh land; a heath; fen land; barren and unprofitable ground. (Co. Litt. 5a.) (2) In the civil law, delay; and, as applied in Roman law, the basis upon which interest is allowed upon money due and payable, but which remains unpaid, or the payment of which is said to be *in mora*.

MORA MUSSA.—A watery or boggy moor; a morass. Mon. Ang. tom. i. 306.

Mora reprobatur in lege (Jenk. Cent. 51): Delay is reprobud in law.

MORAL ACTIONS.—These are defined by Rutherford to be those only in which men have knowledge to guide them and a will to choose for themselves. Inst. Nat. Law lib. l. c. i.

MORAL CERTAINTY.—That high degree of probability, though less than absolute assurance, upon which prudent and conscientious men may unhesitatingly act in matters of the gravest importance, *e. g.* in convicting one accused of crime. A certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. Commonwealth *v. Webster*, Bemis' Report 470.

MORAL CERTAINTY, (equivalent to "proof beyond a reasonable doubt"). 118 Mass. 1.

MORAL CONSIDERATION.—A mere moral consideration will not support a promise, and is nothing in law, *per Parke, B.*, 9 Mees. & W. 501. A subsequent express promise will not convert into a debt that which was not, of itself, a legal debt. See *Flight v. Reed*, 10 Jur. N. S. 1016, *per Wilde, B.* See **CONSIDERATION**, § 9.

MORAL OBLIGATION, (defined). 3 Bos. & P. 251 n.

MORAL INSANITY.—See **MENTAL ALIENATION**.

MORALITY, (defined). 23 Ohio St. 211, 243.

MORATUR IN LEGE.—He denurs, because the party does not proceed in pleading, but rests or abides upon the judgment of the court on a certain point, as to the legal sufficiency of his opponent's pleading. The court deliberate and determine thereupon. See **DE MURDER**.

MORAVIAN.—Otherwise called "Herrnhutters" or "United Brethren." A sect of Christians whose social polity is particular and conspicuous. It sprung up in Moravia and Bohemia, on the opening of that reformation which stripped the chair of St. Peter of so many votaries, and gave birth to so many denominations of Christians. They give evidence on their solemn affirmation. 2 Steph. Com. (7 edit.) 338 n.; 3 *Id.* 536 n.; 4 *Id.* 336 n. See **AFFIRM**, § 3.

MORE OR LESS.—These words in a contract, which rests *in fieri*, will only excuse a very small deficiency in the quantity of an estate, for if there is a considerable deficiency, the purchaser will be entitled to an abatement. *Hill v. Buckley*, 17 Ves. 394; and see *Cross v. Eglin*, 2 Barn. & Ad. 106; *Sugd. Vend. & P.* (14 edit.) 324.

MORE OR LESS, (meaning of, generally). 1 Bland (Md.) 109; 1 Allen (Mass.) 546; 1 Munf. (Va.) 332.

— (in a bill of lading). 34 Me. 554.

— (in a bond conditioned to convey land). 2 Johns. (N. Y.) 37.

— (in a contract to sell lands). 9 Ct. of Cl. 244; 11 *Id.* 522; 41 Ill. 385; 5 Bush (Ky.) 663; 3 Dana (Ky.) 25; 3 Md. Ch. 24; 99 Mass. 231; 40 Mo. 79; 14 N. Y. 143; 9 Paige (N. Y.) 168; 2 Pa. 211; 13 Serg. & R. (Pa.) 136; Rice (S. C.) Eq. 55; 2 Barn. & Ad. 106, 109; 2 Russ. 571; 1 Ves. & B. 376; 8 Com. Dig. 362.

— (in a contract to sell certain goods). 6 Otto (U. S.) 171.

— (in a lease). 4 Serg. & R. (Pa.) 456; 2 Esp. 229.

— (in a description in a deed). 4 Mas. (U. S.) 414, 418; Pet. (U. S.) C. C. 49; 19 Ark. 102; 2 Bibb (Ky.) 82, 270; 3 *Id.* 46; 2 Dana (Ky.) 261; 3 *Id.* 310; 1 A. K. Marsh. (Ky.) 343; 5 J. J. Marsh. (Ky.) 181; 1 Bland (Md.) 103; 29 Md. 305; 4 Md. Ch. 95; 103 Mass. 344; 20 Pick. (Mass.) 62; 23 Minn. 62; 24 Miss. 597; 62 Mo. 405; 1 C. E. Gr. (N. J.) 290, 297; 3 Gr. (N. J.) Ch. 212; 8 Bosw. (N. Y.) 528; 1 Cal. (N. Y.) 493; 7 N. Y. 210; 6 Binn. (Pa.) 102; 3 Pa. 195; 4 Serg. & R. (Pa.) 488, 494; 5 *Id.* 260; 10 *Id.* 280; 6 Watts (Pa.) 117; 1 Desaus. (S. C.) 433; 2 Strobb. (S. C.) 374; 24 Tex. 345; 1 Call (Va.) 301; 4 *Id.* 489; 5 *Id.* 1, 236; 6 *Id.* 218; 2 Hen. & M. (Va.) 164; 1 Munf. (Va.) 336, 337; 2 *Id.* 178, 179 n., 290; 6 *Id.* 188; 8 Wheel. Am. C. L. 286; 4 Kent Com. 407; 6 Ves. 328, 340; 17 *Id.* 394; 1 Chit. Gen. Pr. 180; Pow. Mort. 445, n. (a); 3 Sark. Ev. 16, 28; *Sugd. Vend. & P.* 324.

MOREOVER, (in a devise). 1 Whart. (Pa.) 264.

MORGANATIO MARRIAGE.—The name denotes its Germanic origin, and it is even yet not out of use in that country, under the appellation of a left-handed marriage; but the earliest and clearest description of it is in the Book of Feuds, though wrongly attributed to the Salsic law, in which no trace of it appears,

by the mistake of referring all customs of the Franks to that code. It is defined to be the lawful and inseparable conjunction of a man, of noble or illustrious birth only, with a woman of inferior station, upon condition that neither the wife nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but be contented with a certain allowed rank assigned to them by the morganatic contract. But since these restrictions relate only to the rank of the parties and succession to property, and without affecting the nature of a matrimonial engagement, it must be considered as a just marriage. The marriage ceremony was regularly performed; the union was indissoluble; the children legitimate. This connection was very usual in Europe; but there is not proof that the concubines of Charlemagne and the early kings of France were wives of this description, nor is there occasion to resort to that supposition in defense of their conduct, since the state of concubinage itself was little inferior to this in the public estimation. (See *Croke's Introductio* to *Horner v. Liddiard*, 115-117, A. D. 1800.)—*Wharton*.

MORGANGINA, or **MORGANGIVA**.—A gift on the morning after the wedding; dowry; the husband's gift to his wife on the day after the wedding.—*Du Cange; Cowell*.

MORGUE.—A place where the bodies of persons found dead are kept for a limited time to the end that their friends may identify and claim them. See **MORTUARY**.

MORINA.—Murrain; also, the wool of sick sheep, and those dead with the murrain. *Fleta*, l. ii. c. 79, p. 6.

MORLING, or **MORTLING.**—Wool from the skin of dead sheep.—3 Jac. I. c. 18; 14 Car. II. c. 88.

MORMONISM.—A social and religious system prevailing in the territory of Utah, whereby plurality of wives is not only permitted, but enjoined. These marriages are not recognized by English law. (See *L. R.* 1 P. & D. 130; 35 L. J. P. & M. 57.) Nor are they legal according to the law of the United States, persons entering into them being indictable, even under the laws of the territory, for bigamy.

MOROSUS.—Marshy. See **MORA**.

MORS—MORTE.—Death.

Mors dicitur ultimum supplicium (8 Inst. 212): Death is denominated the extreme penalty.

Mors omnia solvit (Jenk. Cent. 160): Death dissolves all things, e. g. abates an action.

MORSELLUM, or MORSELLUS *TELLUR. Ad*—A small parcel or bit of land. *Mon. Ang.* 282.

MORT CIVILE.—In the French law, civil death, as upon conviction for felony. It was nominally abolished by a law of the 31st of May, 1854, but something very similar to it, in effect at least, still remains. Thus, the property of the condemned, possessed by him at the date of his conviction, goes and belongs to his successors (*héritiers*), as in case of an intestacy; and his future acquired property goes to the State by right of its prerogative (*par droit de déshérence*), but the State may, as a matter of grace, make it over in whole or in part to the widow and children.—*Brown*.

MORT D'ANCESTOR.—*See* ASSIZE OF MORT D'ANCESTOR.

MORTALITY.—*See* BILL OF MORTALITY.

MORTGAGE.—**NORMAN-FRENCH:** *mort*, dead, *gage*, a pledge, from Low Latin; *vadum*, which in its turn comes from either Latin; *vas vadi*, a surety, or Germanic; *vetu vad*, a bond, or from a combination of the two (*Littre, Dict v Gage*). Notwithstanding the authority of Littleton, who says that a mortgage is so called because if the feoffor does not pay on the appointed day the land is dead to him, and if he does pay then it is dead to the feoffee, (§ 381.) it seems quite clear that "mortgage" originally denoted a pledge of land under which the creditor took the rents and profits for himself, so that it was dead or profitless to the debtor, as opposed to a pledge under which the rents and profits went in reduction of the debt (*viz gage, vadium vadum*). (*See Glanvil* x 6 § 8; *Loyel Inst.* (out, 483; *Fisher* 2, n. (c).) For another instance of *mort* in the sense of profitless, *see* **MORTMAIN**. For the history of *pignus* in Roman law, which strikingly resembles that of our own law of mortgage, *see* *Kuntze, Cursus*, § 549 *et seq.*, and for the theory of mortgage in general, *see* *Vangerow, Pandecten* i. 797.

§ 1. A mortgage is where one person (the mortgagor) secures to another (the mortgagee) the payment of money (whether already owing, or advanced at the time, or to be advanced subsequently), by vesting in him some property or interest in property, subject to the mortgagor's right to redeem or buy it back by paying the money within a certain time, while the mortgagee has the right, after the lapse of a certain time, of enforcing his security, or making it available in obtaining payment of the money advanced. The sum secured by the mortgage is called the "mortgage debt," although there is not necessarily any personal liability on the part of the mortgagor (as, for instance, in case of a mortgage by trustees for raising portions). The term "mortgage debt" is also used to signify the security of the mortgagee, *i. e.* his interest in the property mortgaged, and his other rights and remedies for obtaining satisfaction of the debt.

§ 2. The term mortgage is most commonly used as applied to land or other realty and leaseholds (2 *Dav. Prec. Conv.* 549 *et seq.*), but personalty may also be mortgaged, although the transaction is not always called a mortgage, except in the case of ships (as to which *see* *Wms. & B. Adm.* 27, and *infra*, § 17,) and choses in action (*e. g.* policies of insurance, copyrights, &c.) A mortgage of chattels in possession, such as furniture, is called, in England, a "bill of sale" (*q. v.* § 4), and in America a "chattel mortgage" (*q. v.*)

§ 3. A mortgage of stock in the funds, or of a public company, &c., may be made. (*Langton v. Waite*, L. R. 2 Eq. 165; 4 Ch. 402.) Such a mortgage must be distinguished from what is technically called a "stock mortgage," which is where A. has sold a sum of stock (*e. g.* consols), and advanced the proceeds to B., who covenants to replace the stock (*i. e.* to purchase and transfer to A. a like amount of stock) at a future time, and executes a mortgage of land or other property to A. as security for the covenant. The object of such a mortgage generally is that the mortgagee may obtain a higher rate of interest than that paid on the stock, and that he may be protected from the risk of the stock rising in price before the mortgage debt is repaid. *See* *Blyth v. Carpenter*, L. R. 2 Eq. 501; *Whitney v. Smith*, 4 Ch. 513.

Mortgages are of three kinds, legal, equitable and statutory—

§ 4. **Legal.**—A legal mortgage (so called because it was formerly the only one recognized at common law) is where A. conveys property to B. by deed, as a security for the repayment of money. If the property mortgaged consists of the fee-simple of land, the deed contains a conveyance in the ordinary form. If the mortgagor is the owner of the fee-simple, and grants a term of years as the mortgage security (formerly a common mode of mortgaging land), it is called a "mortgage by demise." If the owner of a term or lease wishes to mortgage it, he may do so either by an assignment or by underlease. If the terms of the lease are onerous, the mortgagee generally prefers the latter mode, as he thus escapes liability to

The original lessor. (Dav. *ubi supra*.) A legal mortgage may take one of five forms (*See* 2 Hayes Conv. 119):

§ 5. **Upon condition.**—The old English form (which is the one now in use in America) was a conveyance, with a condition that it should be void on payment of the debt on a fixed day. In such a case the mortgagee had at common law an estate upon condition, and was called "tenant in mortgage." (Litt. §§ 332, 333.) The condition was sometimes called a "defeasance" (*q. v.*) When the time for payment expired, the estate of the mortgagee became absolute at law, but remained redeemable in equity, whence the mortgagor was said to have an "equity of redemption" (*q. v.*) This form of mortgage has long been obsolete in England, in all cases except mortgages of copyholds (*see* SURRENDER); and as the rules of equity now prevail, it seems that a conditional conveyance by way of mortgage cannot become absolute until foreclosure.

§ 6. **With proviso for redemption.**—At the present day, in English law, a mortgage is, in ordinary cases, effected by an absolute conveyance, followed by a proviso or agreement (express or implied) called the "proviso for redemption," by which the mortgagee agrees to reconvey the property to the mortgagor on payment of the debt and interest by a certain date. Formerly, if the money was not repaid on the day, the mortgage became irredeemable at common law, but the mortgagor had an equity of redemption until foreclosure or sale. (Wms. Real Prop. 424; 2 White & T. Lead. Cas. 919.) The common law rule no longer exists. Judicature Act, 1873, § 25, § 11.

*The English Conveyancing Act, 1881, repeals those sections of the Trustees and Mortgagees (Clauses) Act, 1860, which give mortgagees powers of sale, &c., and re-enacts them in an extended form. The provisions of the act only apply to mortgages which are made by deed executed after the 31st December, 1881, and only so far as no contrary intention is expressed in the deed. They confer on the original mortgagee, and any person deriving title under him, (1) a power to sell the mortgaged property, as soon as the money has become due; (2) a power to insure the property against fire, and to add the premiums to the mortgage debt, unless an insurance is kept up by the mortgagor; (3) a power to appoint a receiver as soon as the

§ 7. **Foreclosure.**—Incident to both these kinds of mortgage is the right of foreclosure, a right which entitles the mortgagee to compel the mortgagor either to pay off the debt within a reasonable time, or to lose his equity of redemption. *See* FORECLOSURE.

§ 8. **Power of sale.**—In addition to the rights thus created by operation of law, a legal mortgage sometimes contains elaborate stipulations and provisions, especially in the interest of the mortgagee. The principal of these are the power of sale, which enables the mortgagee to take possession of and sell the property, if default is made in payment of the principal or interest beyond a certain period; and the various powers of leasing and managing the property, and appointing a receiver, which are necessary for the proper management of a landed estate.* *See* MORTGAGOR IN POSSESSION.

§ 9. **With trust for sale.**—A mortgage may also take the form of a conveyance by the borrower to the lender (or his nominee), upon trust to sell the land, and, after satisfying the debt and expenses, &c., to pay the surplus proceeds (if any) to the mortgagor. Such a mortgage does not give the right of foreclosure (2 Hayes Conv. 119 *n.*), but in all other respects it seems to be similar to an ordinary mortgage; and hence, if the mortgagee remains in possession for more than twelve years, without giving a written acknowledgment of the mortgagor's title, the mortgagor's right to redeem is gone. Stat. 3 and 4 Will. IV. c. 27; 37 and 38 Vict. c. 57, § 7; *In re Alison*, 11 Ch. D. 284.

§ 10. **Welsh mortgage.**—A Welsh mortgage is said to be a mortgage under which the mortgagee is let into possession of the mortgaged

money has become due. The power to sell, or appoint a receiver, is not exercisable unless the mortgagor has failed for three months to comply with a notice requiring him to pay off the mortgage debt, or unless interest is in arrear for two months, or there has been a breach of covenant, &c.; but these restrictions do not affect the title of a purchaser buying under the power of sale. As to the other powers of a mortgagee, *see* MORTGAGOR IN POSSESSION; PAYMENT INTO COURT; REDEMPTION.

The same act gives to the court very wide powers of directing the sale of mortgaged property in any action brought respecting a mortgage, whether for redemption, foreclosure, or otherwise.

land until the rents and profits repay the principal and interest, the property being redeemable at any time on payment of the amount remaining due. (Wats. Comp. Eq.) But this is sometimes described as "a mortgage in the nature of a Welsh mortgage," a genuine Welsh mortgage being defined as the conveyance of an estate redeemable at any time on payment of the debt, without payment of interest by the borrower, or account of the rents and profits by the lender, who is let into possession from the beginning, and takes the rents in lieu of interest. (5 Byth. Conv. 96.) A Welsh mortgage does not admit of foreclosure, as the mortgagee does not stipulate for redemption. Fish. Mort. 5, 11.

§ 11. **Sub-mortgage.**—A sub-mortgage is a mortgage by a mortgagee of his mortgage debt (§ 1) with a transfer of the mortgage security; the original mortgagee is then called "sub-mortgagor" in respect of the sub-mortgage.

§ 12. **Further charge.**—A further charge is an agreement that a subsisting mortgage shall be a security for a further advance by the mortgagee.

§ 13. **Further security.**—A further security is a mortgage of some additional property, or a grant of additional remedies to secure a subsisting mortgage debt.

§ 14. **Equitable.**—An equitable mortgage is one which passes only an equitable estate or interest, either (1) because the form of transfer or conveyance used is an equitable one, *i. e.* operates only as between the parties to it, and those who have notice of it, or (2) because the mortgagor's estate or interest is equitable, *i. e.* consists merely of the right to obtain a conveyance of the legal estate.

§ 15. Of the former class, the principal kinds are (Fish. Mort. 33) (1) an agreement to execute a legal mortgage; (2) a deposit of title deeds, share certificates, land certificates, or other documents of title, either with or without a memorandum of deposit, *i. e.* a statement in writing that the documents are deposited by way of security. (Russel v. Russel, 1 Bro. C. C. 269; 1 White & T. Lead. Cas. 603.) As to the difference between a mortgage by deposit and a lien, see 2 Dav. Prec. Conv. 86 n.

§ 16. An equitable mortgage of the second class occurs in the case of a mortgage of an equity of redemption. Thus, if A. mortgages his estate to B., and then mortgages it again to C., though in terms professing to convey the legal estate, C. has an equitable mortgage, because it is in

effect only a charge on A.'s equity of redemption.

§ 17. **Statutory.**—A statutory mortgage is one which, by virtue of the provisions of a statute, produces almost the same effect as an ordinary mortgage, without operating as a transfer or conveyance of the property. Thus, a mortgage of land registered under the English Land Transfer Act, 1875, is effected by an "instrument of charge" executed by the mortgagor and entered on the register. (§ 22 *et seq.*; General Rules 20 *et seq.*, Form 20.) So, a "mortgage" of a ship does not operate as a conveyance, but merely gives the mortgagee a charge with a power of sale. Maud & P. Mer. Sh. 33 *et seq.*

§ 18. A statutory mortgage of freehold or leasehold land, operating by conveyance, may be made under the English Conveyancing Act, 1881, § 26. The act also provides for the transfer and reconveyance of a statutory mortgage. §§ 27-29. See CHARGE; CONSOLIDATION OF SECURITIES; PAWN; PLEDGE; RECEIVER; RECONVEYANCE; TACKING.

MORTGAGE, (defined). 1 Pot. (U. S.) 386, 441; 57 Ala. 53; 22 Conn. 550; 1 Scam. (Ill.) 140; 44 Mo. 429; 9 Bosw. (N. Y.) 322; 26 Wend. (N. Y.) 467, 475; 4 Rawle (Pa.) 255; 4 Kent Com. 136.

— (what constitutes). 21 How. (U. S.) 414; 2 Woodb. & M. (U. S.) 371; 38 Ala. 185; 48 *Id.* 99; 14 Cal. 212; 1 Day (Conn.) 139; 2 Root (Conn.) 69; 4 Ind. 101; 7 *Id.* 359; 22 *Id.* 427; 16 Iowa 422; 3 Dana (Ky.) 170; Harb. (Ky.) 6; 1 A. K. Marsh. (Ky.) 298; 3 La. Ann. 150; 24 Me. 185; 44 *Id.* 286; 2 Allen (Mass.) 115; 2 Mass. 491; 4 *Id.* 113, 114; 5 *Id.* 109; 3 Pick. (Mass.) 484; 5 *Id.* 181; 7 *Id.* 157; 5 Miss. 317; 20 *Id.* 306; 3 Gr. (N. J.) 370; 1 Gr. (N. J.) Ch. 261; Sax. (N. J.) 531; 36 Barb. (N. Y.) 622; 9 Bosw. (N. Y.) 322; 2 Cow. (N. Y.) 324; 3 *Id.* 166; 4 *Id.* 461; 2 Hall (N. Y.) 1, 13; 3 Hill (N. Y.) 95; 5 Johns. (N. Y.) 258; 8 *Id.* 96; 9 N. Y. 213; 31 *Id.* 512; 1 Paige (N. Y.) 48, 56; 5 *Id.* 9; 9 Wend. (N. Y.) 80; 13 *Id.* 485; 23 Wend. (N. Y.) 653, 668; 3 Jones (N. C.) L. 481; 73 Pa. St. 65; 16 Serg. & R. (Pa.) 361; 3 Watts (Pa.) 188; 6 *Id.* 126, 100; 2 Desaus. (S. C.) 570; 4 Sneed (Tenn.) 465; 3 Yerg. (Tenn.) 513; 25 *Id.* 558; 2 Cull (Va.) 421; 4 Hen. & M. (Va.) 101; 2 Munf. (Va.) 40; 2 Wash. (Va.) 11, 127; 7 Wheel. Am. C. L. 561; 1 Atk. 165; 2 *Id.* 495; 3 Esp. 103; 2 Ves. 378; 3 Younge & J. 150.

— (what is not). 9 Ga. 151; 20 *Id.* 142; 29 Ill. 186; 40 N. H. 31; 1 C. E. Gr. (N. J.) 189; 3 Johns. (N. Y.) Ch. 435; 6 Paige (N. Y.) 480; 18 Wend. (N. Y.) 319; 2 Yerg. (Tenn.) 215.

— (distinguished from "pledge"). 4 Abb. (N. Y.) Pr. 106, 109; 1 Abb. (N. Y.) Pr. n. s. 63; 43 Barb. (N. Y.) 607, 610; 1 R. b. l. (N. Y.) 160; 24 Wend. (N. Y.) 117; U. S. F. g. tit. Bailm. II. 2; Mortgage Xil. 1.

MORTGAGE, (not an assignment or conveyance). 10 Cal. 280, 294.

— (of real, distinguished from that of personal property). 6 Paige (N. Y.) 586.

— (may be given to secure future debts). 1 Pet. (U. S.) 386; 2 Cow. (N. Y.) 247.

— (when merely a security). 1 Houst. (Del.) 320; 5 Ind. 393; 7 Id. 213; 27 Id. 472.

— (when a sale). 55 Me. 355; 4 Abb. (N. Y.) Pr. 106.

— (in an agreement). 11 Gray (Mass.) 492.

— (in practice act, § 120). 8 Cal. 260.

— (in act of October 20th, 1807). 25 Mo. 182.

— (in act of 1789, § 26). 6 So. Car. 316.

— (in a power of attorney to). 2 Cow. (N. Y.) 199.

— (in a will). 2 Ld. Raym. 834.

MORTGAGE, ASSIGN AND TRANSFER, (in a deed). 8 Blackf. (Ind.) 140.

MORTGAGE BY DEPOSIT.—See **MORTGAGE**, § 15.

MORTGAGE, CHATTEL, (defined). 7 Greenl. (Me.) 241; 52 Barb. (N. Y.) 367.

— (what constitutes). 13 Ark. 112; 16 Ind. 389; 3 Md. Ch. 521; 97 Mass. 452, 489.

MORTGAGE DEBT.—See **MORTGAGE**, § 1.

MORTGAGE, EQUITABLE, (defined). 58 Ala. 39; 1 Chit. Gen. Pr. 335.

— (what constitutes). 2 Sumn. (U. S.) 486; 38 Ala. 643; 6 Gill & J. (Md.) 275; 1 Chit. Gen. Pr. 469.

MORTGAGE OF GOODS.—See **CHATTEL MORTGAGE**; **MORTGAGE**, § 2.

MORTGAGEE.—He that takes or receives a mortgage.

MORTGAGOR, or MORTGAGER.—He that gives a mortgage.

MORTGAGOR AND MORTGAGEE IN POSSESSION.—

§ 1. **Mortgagor.**—A mortgagor in possession is in the same position as an ordinary landowner, except that he must not prejudice the security by committing waste. In English law, he is entitled to collect rents under leases granted before the mortgage, until the mortgagee gives the tenants notice of the mortgage; and,

under section 25 of the Judicature Act, 1878, he may bring actions in his own name in respect of the possession or rents of the land. A limited power of leasing is sometimes given to the mortgagor by the mortgage.

§ 2. **Mortgagee.**—A mortgagee in possession is bound to account to the mortgagor for the rents and profits which he has received, or ought with proper management to have received, and is liable for waste. (Wats. Comp. Eq. 670. As to the effect of the ordinary attornment clause in a mortgage in making the mortgagee a mortgagee in possession without any act on his part, see *In re Stockton Iron Co.*, 10 Ch. D. 335, 356; *Ex parte Punnett*, 16 Id. 226.) Powers of leasing and management, and of appointing a receiver, are frequently given by the mortgage deed.* See **MORTGAGE**, § 8.

MORTH.—Murder, answering exactly to the French *assassinat* or *muerde de guetapens*.

MORTLAGA.—A murderer.—*Cowell*.

MORTLAGE.—Murder.—*Cowell*.

MORTIFICATION.—A term of Scotch law, synonymous with the English "mortmain" (*q. v.*)

MORTIS CAUSA DONATIO.—See **DONATIO CAUSA MORTIS**.

MORTMAIN.—NORMAN-FRENCH: *morte main*; (Britt. 32b; Loysel Int. Cout. gloss.) LOW LATIN: *mortua manus*, a dead hand, because "the lands were said to come to dead hands as to the lords, for that by alienation in mortmain they lost wholly their escheats, and in effect their knight services for the defence of the realm; wards, marriages, reliefs, and the like; and therefore was called a dead hand, for that a dead hand yeeldeth no service." Co. Litt. 2b.

The term "mortmain" is applied to two classes of statutes.

§ 1. **Statutes of mortmain.**—The statutes prohibiting alienation in mortmain, in the strict sense of the word, *i. e.* alienation of land to corporations, are *Magna Charta*, the Stat. *De Viris Religiosis* (7 Edw. I.), Stat. Westminster II. (13 Edw. I. c. 32), and 15 Rich. 2. These statutes prohibited not only direct grants of land to corporations, whether sole or aggregate, but also several contrivances by which the religious houses, against which the statutes were

* By the English Conveyancing Act, 1881, a mortgagor or mortgagee of land, while in possession, has a power of making binding leases of the mortgaged land, subject to certain limitations and restrictions as to the length of the term, the rent, &c. § 18.

By the same act, a mortgagee in possession of

land has power to cut and sell timber and other trees ripe for cutting, not being used for shelter or ornament. § 19.

These provisions only apply to mortgages made after the 31st December, 1881, and only so far as a contrary intention is not expressed by the parties.

especially directed, attempted to elude their provisions. (See *USE*.) Their effect was, that if land was granted to a corporation without a license from the crown, and from the feudal lords of whom it was mediately or immediately holden, then, within a certain time, the immediate lord might enter on or take possession of the land, which thus became forfeited to him; or, if he failed to do so, each lord paramount had the right to enter in his turn, and in default of all of them the crown. In modern times, however, the rights of intermediate lords became unimportant, and by the Stat. 7 and 8 Will. III. c. 37, it was enacted that the crown for the future may grant licenses to aliene or take land in mortmain, of whomsoever it may be holden. Many corporations are exempt from the operation of the Statutes of Mortmain: such are the universities and colleges of Oxford and Cambridge, associations formed under the Companies Acts, the Building Societies, Friendly Societies, and Industrial and Provident Societies Acts, &c. Britt. 90 a; Co. Litt. 2 b, 98 b; 2 Bl. Com. 267; 1 Steph. Com. 454; Tud. Char. Trusts 36; Digby Hist. R. P. 98, 150, 256, 325. *See, also*, the acts of 18 and 19 Vict. c. 124, and 33 and 34 Vict. c. 34, enabling charities, &c., to invest money in real securities.

§ 2. *Charitable Uses, or Mortmain Act.*—In the popular use of the word, the Mortmain Act is the act of 9 Geo. II. c. 36, (more accurately called the "Charitable Uses Act") which prohibits gifts of land or of money to be laid out in the purchase of land for any charitable purposes, except by absolute and immediate conveyance by deed, executed and enrolled with certain formalities, the object being to prevent improvident alienations or dispositions of land by languishing or dying persons to the disherison of their lawful heirs. Therefore, all gifts by will of land and of money arising out of or connected with land, for charitable purposes, are void.* The act was passed to supplement the provisions of the Statutes of Mortmain, (*supra*, § 1,) and of the act against superstitious uses (*q. v.*); because, although charities are not generally corporations, yet gifts to them are practically in perpetuity, and are, therefore, contrary to the policy of the law, which favors free dealing in land. The Charitable Uses Act is, however, quite distinct from the Statutes of Mortmain; and, therefore, a corporation which has power to hold land in mortmain cannot take land by a gift contravening the provisions of the Charitable Uses Act. *Luckraft v. Pridham*, 6 Ch. D. 205.

MORTMAIN, (statute of). 1 Watts (Pa.) 218; 3 W. & A. Am. C. L. 466.

MORTUARY.—

§ 1. *Public health.*—In the modern sense of the word, a mortuary is a place for the reception of dead bodies before interment. Under

the Public Health Act, 1875, §§ 141, 142, every local sanitary authority is empowered to provide a mortuary, and to cause dead bodies to be removed to it in cases where their retention in dwelling-houses might be prejudicial to the health of the inmates.

§ 2. *In church law*, mortuaries are a sort of ecclesiastical heriots, being a customary gift claimed by and due to the minister in very many parishes on the death of one of his parishioners. The nature of the gift formerly varied according to the custom of the place, being frequently the next best chattel of the deceased, after the lord's heriot. But by Stat. 21 Hen. VIII. c. 6, mortuaries were fixed at certain sums, in no case exceeding 10s. 2 Bl. Com. 425; Phillim. Ecc. L. 873; and *see* Stats. 13 Ann. c. 6; and 28 Geo. II. c. 6.

MORTUUM VADIUM.—A dead pledge or mortgage. *See* MORTGAGE.

MORTUUS.—Dead.

Mortuus exitus non est exitus (Co. Litt. 29): A dead issue is no issue.

Mos retinendus est fidelissimæ vetustatis (4 Co. 78): A custom of the truest antiquity is to be retained.

MOST PUBLIC PLACES, (in a statute). 6 Pick. (Mass.) 276; 3 Johns. (N. Y.) Ch. 339; 6 Id. 331; 1 Serg. & R. (Pa.) 127.

MOTE.—A meeting; an assembly. Used in composition, as *burgmote*, *falkmote*, &c. *See* GEMOT.

MOTE-BELL.—The bell which was used by the Saxons to summon people to the court. — *Cowell*.

MOTEER.—A customary service or payment at the mote or court of the lord, from which some were exempted by charter or privilege. — *Cowell*.

MOTHER-CHURCH. — *See* MATRUX ECCLESIA.

MOTHERING. — A custom of visiting parents on Mid-Leut Sunday. — *Jacob*.

MOTIBILIS. — One that may be moved or displaced; also, a vagrant. *Plen.* l. 5, c. vi.

MOTION.—

§ 1. A motion is an application to a court or a judge. Some motions are made summarily, without reference to any preceding action, as where application is made for a writ of *habeas corpus* (*q. v.*) Other

* *See* Tud. Char. Trusts 39 *et seq.*; Wms. Real Prop. 69 *et seq.*, where the acts relaxing some of the stringent provisions of the Stat. 9 Geo. II. are referred to. As to what kinds of property (debentures, &c.,) are within the act,

and the effect of a bequest to a charity out of a fund partly arising from land, *see* Wals. Comp. Eq. ABATEMENT, § 4, and DENYANCE; *Attree v. Hawe*, 9 Ch. D. 337; *Ashworth v. Munn*, 13 Ch. D. 363.

motions are employed to obtain a judgment on the main question in an action (*see* MOTION FOR JUDGMENT); but these are not motions in the sense in which the word is commonly used, namely, to denote an interlocutory application in an action. Motions may be made either in court or in chambers; but, in England, as a general rule, a motion is an oral application made by counsel in open court, as opposed to a petition, which is a written application, and to a summons, which is made in chambers. Dan. Ch. Pr. 1437; 3 Steph. Com. 627; Wms. & B. Adm. 302.

§ 2. **On notice—Ex parte.**—Ordinarily a motion is only made after notice has been given to the other side; sometimes, however, a motion is made *ex parte*. In common law practice, too, a motion is sometimes for a rule to show cause; in such a case the applicant moves *ex parte* for a rule calling upon the other side to show cause to the court on a day named why the order asked for should not be made upon him. *See* ORDER; RULE.

§ 3. **Of course.**—A motion of course is a motion which is granted by the court as a matter of course.

§ 4. **Saving motion.**—In English Chancery practice, if counsel is unable to make a motion on the day for which notice has been given, he is entitled, as a matter of right, "to save the motion," *i. e.* to adjourn it to the next motion day by mentioning it to the court, without the consent of the other side. Dan. Ch. Pr. 1444.

§ 5. **Abandoned motion.**—If counsel does not either bring on or save his motion on the day for which notice has been given, (provided, of course, he has had an opportunity of being heard), the motion is said to be abandoned, and the other side is entitled to his costs of it.

MOTION, (defined). 41 Cal. 645.

—— (in the code). 3 How. (N. Y.) Pr. 287.

MOTION FOR DECREE.—Under the chancery practice, the most usual mode of bringing on a suit for hearing when the defendant has answered, is by motion for decree. To do this the plaintiff serves on the defendant a notice of his intention to move for a decree. Hunt. Suit 59; Dan. Ch. Pr. 722. *See* DECREE, § 1; FURTHER CONSIDERATION.

MOTION FOR DIRECTIONS.—Formerly, in English divorce and probate practice, after the pleadings had been concluded, it was

necessary to make a motion to obtain the directions of the court as to the manner in which the questions of fact raised by the pleadings were to be tried. (Browne Div. 229; Browne Prob. Pr. 290. *See* Rules of Court xxxvi., 5.) This practice has recently been abolished, and a cause at issue is now set down for trial in accordance with a general order of the court. Probate, Divorce and Admiralty Rules, § 205, (10th August, 1890.)

MOTION FOR JUDGMENT.—

§ 1. This is the mode of obtaining the judgment of a court of record in an action in all cases where no other mode of obtaining it is prescribed. (Sm. Ac. 146.) Thus, if at the trial of an action the judge does not direct any judgment to be entered, the proper course is for the party who thinks the result of the trial in his favor to move for judgment on the verdict or findings at the trial. So, if the defendant makes default in delivering his defense, the plaintiff must set down the action on motion for judgment, unless it is of such a nature that he may enter judgment for his claim at once, (*e. g.* where it is for a debt, damages, recovery of land, or the like.)

§ 2. A motion for judgment ordinarily requires to be set down in the cause list, and notice of it given to the other side.

MOTION FOR NEW TRIAL.—

See TRIAL.

MOTION IN ARREST OF JUDGMENT.—

See ARREST OF JUDGMENT.

MOTION TO SET ASIDE JUDGMENT.—

This is a step taken by a party in an action who is dissatisfied with the judgment directed to be entered at the trial of the action, on the ground either that the finding of the jury has been wrongly entered, or that the judgment itself is wrong.

MOTIVE.—That which moves to action; the inducement, cause or reason why an act is done.

MOTU PROPRIO.—The commencing words of a certain kind of papal rescript

MOULD, (defined). 2 W. Bl. 822.

MOULT.—A mow of corn or hay.—*Par. Antiq.* 401.

MOUNTAIN LAND, (does not describe situation but quality). 1 Burr. 629; 1 Str. 71.

MOVABLE EFFECTS, (in a will). 18 Wend (N. Y.) 208.

MOVABLE ESTATE, (in a will). Penn. (N. J.) 602.

MOVABLE, EVERY, (in a devise). 2 Dall. (U. S.) 142.

MOVABLE GOODS AND CHATTELS, (in a will). 1 W. Jones 225; 2 Com. Dig. 661.

MOVABLE PROPERTY, (defined). 19 Conn. 245, 247.

— (includes what). 19 Conn. 238, 245; 6 Dana (Ky.) 343.

— (in a bequest). 2 Ired. (N. C.) Eq. 292.

MOVABLES.—Goods; furniture; personalty.

MOVABLES, IN-DOOR, (in a bequest). 17 Pick. (Mass.) 404.

MOVABLES OR GOODS, (may include bonds). 4 Wheel. Am. C. L. 386.

MOVING FOR AN ARGUMENT.

—Making a motion on a day which is not motion day, in virtue of having argued a special case; used in the Exchequer after it became obsolete in the Queen's Bench.—*Wharton*.

MUCK AND MANURE, (in a covenant). 5 Barn. & Ald. 413, 418.

MULATTO.—The offspring of parents one of whom is white and the other black.

MULATTO, (defined). 18 Ala. 276, 720; 3 Har. & M. (Md.) 506; 7 Mass. 88; 1 Bail. (S. C.) 270, 275.

— (in a statute). 13 Mass. 549, 553.

MULCT—MULCTA.—A fine; a pecuniary punishment.

Mulcta damnum famæ non irrogat (Cod. 1, 54): A fine does not involve loss of character.

MULIER.—NORMAN-FRENCH: *muliera*, from Latin, *mulier*, a wife Brit. 203 b; Co Litt. 243 b.

In the old books "*mulier*" is applied to a son, daughter, brother, sister, &c., to signify one born in lawful wedlock, or legitimate, as opposed to a bastard. The expression was formerly of importance in what was called the case of "*Bastard eigné and mulier puinné*" ("eldest son a bastard and younger son legitimate"), which occurred where a man had a bastard son, and afterwards married the mother and by her had a legitimate son. If the father died and the bastard entered on his land and died seized of it, so that it descended to his issue, the *mulier puinné* was barred of his right to the land. (Litt. § 399 *et seq.*) The doctrine seems to have been abolished by 3 and 4 Will. IV. c. 27, § 39. 2 Bl. Com. 248, n. (14). See BASTARD.

MULIERATUS.—A legitimate son.—*Glanv.*

MULIERTY.—Lawful issue, because begotten *e muliere* (of a wife), and not *ex concubina*. Co. Litt. 352.

MULLONES FCENI.—Cocks or ricks of hay.—*Cowell*.

MULMUTIN LAWS.—See MOLMUTIAN LAWS.

MULNEDA.—A place to build a water-mill.

MULTA, or MULTURA EPISCOPI.—A fine or final satisfaction, anciently given to the king by the bishops, that they might have power to make their wills; and that they might have the probate of other men's wills, and the granting of administration. 2 Inst. 291.

Multa conceduntur per obliquum, quæ non conceduntur de directo (6 Co. 47): Many things are indirectly conceded which are not conceded directly.

Multa ignoramus quæ nobis non laterent si veterum lectio nobis fuit familiaris (10 Co. 73): We are ignorant of many things which would not be hidden from us if the reading of old authors was familiar to us.

Multa in jure communi contra rationem disputandi, pro communi utilitate, introducta sunt (Co. Litt. 70): Many things contrary to the rule of argument are introduced into the common law for common utility.

Multa multo exercitatione facilius quam regulis percipies (4 Inst. 50): You will perceive many things much more easily by practice than by rules.

Multa non vetat lex, quæ tamen tacite damnavit: The law forbids not many things which yet it has silently condemned.

Multa transeunt cum universitate quæ non per se transeunt (Co. Litt. 12): Many things pass in the whole, which do not pass by themselves.

Multi multa, nemo omnia novit (4 Inst. 348): Many men have known many things; no one has known everything.

MULTIFARIOUSNESS.—Under the practice of courts of Chancery, a bill of complaint is open to a demurrer for multifariousness when it attempts to embrace too many objects or causes of suit. (Dan. Ch. Pr. 283.) Under the now English practice, a plaintiff may include as many causes of action as he pleases in one writ, except in the case of actions for the recovery of land, actions by executors and trustees in bankruptcy, &c., and in the case of one action being brought for several claims which cannot be conveniently disposed of together. Rules of Court, xvii. See JOINDER, § 1.

MULTIFARIOUSNESS, (defined). 44 Mo. 350. — (in bill in equity). 5 Paige (N. Y.) 160, 254; 15 Am. Dec. 427 n.; 7 Md. L. Rec., No. 8.

MULTIPARTITE.—Divided into several parts.

MULTIPLEPOINDING.—A proceeding in Scotch law, of the same nature as the English and American "interpleader" (q. v.)

Multiplex et indistinctum parit confusionem; et quæstiones quo simpliciores, eo lucidiores. (Hob. 335): Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.

Multiplicata transgressione crescat poenæ inflictio (2 Inst. 479): Let infliction of punishment increase with multiplied crime.

MULTIPLICITY.—A bill in equity may be objectionable for an undue dividing or splitting up of a single cause of suit, and thus multiplying subjects of litigation. Equity discourages unreasonable litigation. It will not, therefore, permit a bill to be brought for a part of a matter only, where the whole is the proper subject of one suit. Upon a somewhat analogous ground, if an ancestor has made two mortgages, the heir will not be allowed to redeem one without the other; for in such a case, the equity of the heir, like that of the ancestor, is to redeem the whole or neither. Story Eq. Pl. 234.

MULTIPLY.—When a thing is divided into several parts, and something which was dependent on or annexed to it thenceforward becomes dependent on or annexed to each part of it, the accessory is said to be multiplied. Thus, if a copyhold tenement for which a heriot is due to the lord on the death of each successive tenant, is divided into parcels and conveyed to different persons, the heriot will be multiplied, i. e. a heriot will be due for each parcel. 10lt. Copyh. 183, citing *Attree v. Seutt*, 6 East 481. See APPORTIONMENT; ENTIRE.

MULTITUDE.—According to some old writers, an assembly of ten or more persons, but others claim that there is no fixed minimum number.

MULTITUDE, (in a statute). 104 Mass. 597.

Multitudinem decem faciunt (Co. Litt. 257): Ten make a multitude.

Multitudo errantium non parit errori patrocinium (11 Co. 75): The multitude of those who err gives no excuse to error.

Multitudo imperitorum perdit curiam (2 Inst. 219): A multitude of ignorant persons destroys a court.

MULTO.—In old records, a wether sheep.

MULTO FORTIORI.—See A FORTIORI.

Multo utilius est pauca idonea effundere quam multis inutilibus homines gravari (4 Co. 20): It is more useful to pour forth a few useful things than to oppress men with many useless things.

MULTURE.—A grist or grinding; the corn ground; also the toll or fee due for grinding.

MUMMING.—Antic diversions in the Christmas holidays, suppressed in Queen Anne's time. See Stat. 3 Hen. VIII. c. 9.

MUND.—Peace; whence *mundbryc*, a breach of the peace. Leg. H. 1 c. 37.

MUNDBYRD—MUNDEBURDE.—A receiving into favor and protection.—*Cowell*.

MUNERA.—Portions of lands distributed to tenants, and revocable at the lord's will, under the early feudal system.

MUNICIPAL.—Belonging to a city or municipal corporation.

MUNICIPAL BONDS.—Negotiable bonds issued pursuant to statutory authority, by a municipal corporation, to secure its indebtedness. Their payment, when due, is effected by means of taxation. See BOND, § 5.

MUNICIPAL CLAIMS, (does not apply to registered taxes). 72 Pa. St. 92.

MUNICIPAL CORPORATION.—

§ 1. In American law.—A public corporation, created by government for political purposes, and having subordinate and local powers of legislation; e. g. a county, incorporated town, city, etc. 2 Kent Com. 275.

§ 2. In English law.—A corporation consisting of all or part of the inhabitants of a town, and having the power and duty of enforcing the good rule and government of the place, including the lighting, cleansing, paving, and improving of the streets, the prevention of nuisances, &c. (Grant Corp. 16; 3 Steph. Com. 31 *et seq.*) Most municipal corporations (London being the principal exception) are regulated by the Municipal Corporations Act, 1835, (see the Municipal Corporations (New Charters) Act, 1877,) which fixes the qualification for the burgesses or members of the corporation, and provides for the election in each borough of a mayor, aldermen, and council; for the appointment of a watch committee to regulate the

police of the borough, and for the payment of the expenses of the borough out of the borough fund and rate. Most municipal corporations are also the authorities for carrying out the provisions of the Public Health Act, 1875, the Artisans' Dwellings Act, 1875, and similar acts, in their respective districts.

§ 3. Corporations regulated by the M. C. Act, 1835, are trustees of the corporate property for the benefit of their respective boroughs. Grant Corp. 108; Att.-Gen. v. Mayor of Brecon, 10 Ch. D. 204. See BOROUGH; JUSTICE OF THE PEACE; METROPOLITAN BOARD OF WORKS; RECORDER.

MUNICIPAL CORPORATION, (defined). 7 Cal. 361; 16 *Id.* 222; 1 Dak. T. 247.

— (distinguished from "private corporation"). 84 Pa. St. 487, 493.

MUNICIPAL COURTS, (defined). 22 Cal. 473.

MUNICIPAL LAW.—See LAW, § 3.

MUNICIPAL PURPOSES, (in a statute). 43 Ala. 593.

MUNICIPAL REGULATION, (defined). 4 Crim. Law Mag. 81.

MUNIMENT.—Title deeds and other documents relating to the title to land are sometimes called "muniments," from the Latin word *munio*, which signifies to defend or fortify, because they enable the owner to defend his estate.—*Termes de la Ley*.

MUNIMENT-HOUSE, or MUNIMENT-ROOM.—A house or room of strength, in cathedrals, collegiate churches, castles, colleges, public buildings, &c., purposely made for keeping deeds, charters, writings, &c. 3 Inst. 170.

MUNITIONS OF WAR, (in a statute). 9 Cranch (U. S.) 243.

MURAGE.—Money paid to keep walls in repair.—*Cowell*.

MURATIO.—A town or borough surrounded with walls.—*Jacob*.

MURDER.—The crime of unlawful homicide with malice aforethought, (see HOMICIDE; MALICE), as where death is caused by an act done with the intention to cause death or bodily harm, or which is commonly known to be likely to cause death or bodily harm. Thus, if A. finds B. asleep on some straw and lights the straw, whether he means to kill B., or whether he means to do B. serious injury without killing him, in either case, if B. is burnt to death, A. is guilty of murder. So, if A. shoots at B., intending to kill him, and kills C. instead, A. is guilty of murder. •

§ 2. Murder is punishable by death (*q. v.*); attempts to murder are punishable by imprisonment for life or a term of years. Steph. Cr. Dig. 144 *et seq.*; 1 Russ. Cr. & M. 641 *et seq.*

§ 3. Self-murder.—A person who kills himself in a manner which, in the case of another person, would amount to murder, is guilty of self-murder or suicide (*q. v.*) See FELO DE SE.

MURDER, (defined). 4 Dall. (U. S.) 145; 25 Cal. 361; 27 *Id.* 572; 41 *Id.* 96; 1 Dak. T. 458; 14 Bush (Ky.) 340; 5 Cush. (Mass.) 306; 8 Mich. 320, 337; 10 *Id.* 219; 2 Halst. (N. J.) 243; 5 *Id.* 174; 5 Cow. (N. Y.) 39, 51; 13 Wend. (N. Y.) 159, 167; 12 Phil. (Pa.) 553; 58 Pa. St. 10; 84 *Id.* 80; 4 Humph. (Tenn.) 136.

— (what constitutes). 4 Dall. (U. S.) 428; 1 Wash. (U. S.) 463; 25 Ark. 405; 29 *Id.* 248; 56 Cal. 36; 33 Ga. 303; 49 *Id.* 482; 22 Ind. 1; 11 Bush (Ky.) 575; 101 Mass. 1; 30 Mich. 16; 69 Mo. 391; 2 Park. (N. Y.) Cr. 28; 19 Wend. (N. Y.) 615; Leach C. C. 112; 1 Moo. C. C. 334.

— (what killing is not). 74 Ind. 1; 53 Vt. 560.

— (distinguished from "manslaughter"). 1 Hawks (N. C.) 78; 58 Pa. St. 10; 2 Va. Cas. 78.

— (in an indictment). 24 La. Ann. 493; 50 Wis. 516.

MURDER IN THE FIRST DEGREE, (defined). 17 Cal. 389; 39 *Id.* 691; 43 *Id.* 552; Wright (Ohio) 20; 2 Ashm. (Pa.) 41, 69; 75 Pa. St. 403; 18 Am. Dec. 770, 774 *n.*, 784 *n.*

— (what constitutes). 49 Cal. 167; 23 Ind. 231; 54 Mo. 153; 64 *Id.* 191, 319; 9 Humph. (Tenn.) 660; 1 Tex. App. 159, 501; 53 Vt. 37.

— (what is not). 54 Ind. 128.

— (distinguished from "murder in the second degree"). 21 Cal. 17; 25 *Id.* 361; 34 *Id.* 211; 58 Pa. St. 10; 4 Humph. (Tenn.) 136; 53 Vt. 560.

MURDER IN THE SECOND DEGREE, (defined). 52 Ala. 348; 39 Cal. 694; 18 Am. Dec. 770, 774 *n.*, 784 *n.*

— (what constitutes). 33 Iowa 270; 19 Ind. 170; 23 *Id.* 231.

MURDERMENT.—An obsolete term for murder.

MURDRUM.—The secret killing of another, also the amercement to which the vill wherein it was committed, or if that were too poor, the whole hundred, was liable. As to the rates of compensation for murder amongst the Anglo-Saxons, see 2 Hall. Mid. Ages 275.

MURORUM OPERATIO.—The service of work and labor done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage* (*q. v.*)—*Cowell*.

MUSIC.—See COPYRIGHT; RIGHT OF REPRESENTATION AND PERFORMANCE.

MUSSA.—A moss or marsh ground; or a place where sedges grow; a place overrun with moss.—*Cowell*.

MIST, (in a statute, when directory only). 1 Civ. Pro. (N. Y.) 126.

— (in New York code). 61 How. (N. Y.) Pr. 225.

MUST VEST IN INTEREST, (in New York revised statutes). 5 Paige (N. Y.) 463.

MUSTER-BOOK.—A book in which the forces are registered.—*Termes de la Ley*.

MUSTER-MASTER.—One who superintended the muster to prevent frauds. Stat. 35 Eliz. c. 4.

MUSTER ROLL.—The formal list of a body of soldiers, or of a ship's company.

MUSTERING INTO THE SERVICE, (construed). 8 Allen (Mass.) 480.

MUTA-CANUM.—A kennel of hounds; one of the mortuaries to which the crown was entitled at a bishop's or abbot's decease. 2 Bl. Com. 426.

MUTATIS-MUTANDIS.—With the necessary changes in points of detail.

MUTE.—A prisoner is said to stand mute when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise. In the first case, a jury must be sworn to try whether the prisoner stands mute of malice (*i. e.* obstinately), or by visitation of God (*a. g.* being deaf or dumb). If he is found mute by visitation of God, the trial proceeds as if he had pleaded not guilty; if he is found mute of malice, or if he will not answer directly to the indictment, the court may order a plea of not guilty to be entered, and the trial proceeds accordingly. (4 Steph. Com. 391; Stat. 7 and 8 Geo. IV. c. 28.) In *Reg. v. Berry* (1 Q. B. D. 447) a plea of "not guilty" was ordered to be entered for a prisoner who stood mute by visitation of God.

MUTILATION.—Deprivation of a limb or any essential part. See **MAYHEM**.

MUTINY.—Open and violent resistance of their superior officers, by soldiers or seamen, or opposition to their lawful authority.

MUTINY ACT.—

§ 1. The English Bill of Rights (Stat. 1 W. & M. (2) c. 2) declares that the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law. Therefore, to enable the army to be kept up, an act of parliament is annually passed authorizing this to be done. Formerly this annual act contained elaborate provisions for the enlistment, payment and billeting of soldiers, for the punishment of mutiny and desertion, and generally for the government of the army (2 Steph. Com. 589), and was hence called the Mutiny Act; but these provisions have recently been consolidated in one act, called the Army Discipline and Regulation Act, 1879; and, therefore, in the annual act it is sufficient to provide that the Army Discipline and Regulation Act, 1879, shall remain in force for one year.

§ 2. The Army Discipline and Regulation Act, 1879, has been supplemented and amended by various acts, especially the Regulation of the Forces Act, 1881, and has now been repealed by the Army Act, 1881, which consolidates its provisions with those of the amending acts.

MUTUAL ACCOUNTS, (what constitutes). 2 Gr. (N. J.) 545; 17 Serg. & R. (Pa.) 347; 6 Wheel. Am. C. L. 472; 1 Chit. Gen. Pr. 777; 1 Eq. Cas. Abr. 8.

— (what are not). 15 Wend. (N. Y.) 554.

— (under statutes of limitation). 17 Cal. 344, 594; 35 *Id.* 122; 12 Ind. 174; 38 Me. 149; 51 *Id.* 104; 5 Bosw. (N. Y.) 226.

MUTUAL COMBAT, (defined). 46 Ga. 148, 158.

MUTUAL CREDITS — MUTUAL DEALINGS.—The phrase "mutual credits" used in the English Bankruptcy Acts denotes such dealings between two persons as must in their nature terminate, or have a tendency to terminate, in debts. (Robs. Bankr. 312; Chit. Cont. 785; *Rose v. Hart*, 8 Taunt. 449; 2 Sm. Lead. Cas. 296.) The "mutual credit clauses" in the acts provide that where there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and one of his creditors, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively. (Bankruptcy Act, 1869, § 39. See Bankruptcy Act, 1849, § 171.) The effect produced by the mutual credit clause is, therefore, a species of set-off (*q. v.*), but differs from the ordinary set-off between solvent persons in having for its object, not to prevent cross actions, but to avoid the injustice, which would otherwise arise, of compelling a creditor to pay the trustee in bankruptcy the full amount of the debt due from him to the bankrupt, while the creditor would perhaps only receive a small dividend under the bankruptcy on the debt due from the bankrupt to him. Robs. Bankr. 303, 314. See *Astley v. Gurney*, L. R. 4 C. P. 714; *In re Winter*, 8 Ch. D. 225.

MUTUAL CREDIT, (within the Stat. 5 Geo. II. c. 30, § 28). 5 Barn. & Ald. 861, 866; 2 Brod. & B. 89, 96.

MUTUAL CREDITS, (what constitute). 85 N. Y. 580; 1 Ark. 228, 230, 235; 1 Barn. & Ald. 471, 472; 1 Eng. Com. L. 45; Holt 408; 2 J. B. Moo. 547; 1 P. Wms. 325; 4 Taunt. 888; 5 Id. 56; 8 Id. 156, 499; 3 T. R. 507, 509.

— (what are not). 1 Atk. 229, 237; 10 Barn. & C. 777, 783; 4 Eng. Com. L. 22; 1 J. B. Moo. 451; 4 Id. 515; 5 Price 593; 4 Taunt. 775; 8 Id. 21.

— (within 6 Geo. IV. c. 16, § 50). 1 Barn. & Ad. 521, 526.

— (in a statute). 1 T. R. 112; 4 Id. 211; Chit. Bills 740; 1 Chit. Gen. Pr. 140.

MUTUAL DEBTS.—Money due on both sides between two persons. (3 Bl. Com. 305.)—See COUNTER-CLAIM; SET-OFF.

MUTUAL DEBTS, (defined). 1 Hempst. (U. S.) 155.

— (what are). 8 Wend. (N. Y.) 113; 5 Wheel. Am. C. L. 322.

— (what are not). 43 Conn. 80; 15 Mass. 415.

— (in a statute). 2 Johns. (N. Y.) 150, 155.

MUTUAL DEMANDS, (what are). 2 Rand. (Va.) 449.

MUTUAL INSURANCE.—See INSURANCE.

MUTUAL MISTAKE.—See MISTAKE, § 10.

MUTUAL MISTAKE, (defined). 45 Barb. (N. Y.) 478, 481.

MUTUAL OPEN ACCOUNT CURRENT, (what is). 27 Ark. 343, 346.

MUTUAL PROMISES.—See CONSIDERATION, § 5; PROMISE.

MUTUAL TESTAMENT.—Wills made by two persons who leave their effects reciprocally to the survivor.

MUTUALITY.—

§ 1. **Mutuality of assent**.—In every agreement the parties must, as regards the principal or essential part of the transaction, intend the same thing, *i. e.* each must know what the other is to do; this is called "mutuality of assent." Chit. Cont. 13.

§ 2. **Mutuality of obligation**.—In a simple contract arising from agreement, it is sometimes the essence of the transaction that each party should be bound to do something under it. This requirement is called "mutuality." Thus, an agree-

ment by A. to refer a question between him and B. to arbitration is not enforceable, unless B. also agrees to be bound by the award; and an agreement by C. with D. to learn a trade is not binding unless there is also an undertaking by D. to teach him. (Chit. Cont 14.) This may be called "mutuality of obligation."

§ 3. **Mutuality of remedy**.—Mutuality of remedy is where each party can enforce the contract against the other. Thus, a vendor of land can enforce specific performance of the contract by the purchaser, because the purchaser could have done the same to him. On the other hand, mutuality of remedy does not exist where one of the parties to a contract is under disability, or where it is required by the Statute of Frauds to be in writing, and he has not signed it, because, though he can enforce it, the other party cannot. Id. 13.

MUTUALITY, (of a contract, defined). 26 Md. 37.

MUTUALLY AGREED, (in a contract to carry freight). 10 East 311.

MUTATION.—The act of borrowing.

MUTUO.—To borrow.

MUTUS.—Silent, not having anything to say. See MUTE.

MUTUS ET SURDUS.—Dumb and deaf.

MUTUUM.—A loan, whereby the absolute property in the thing lent passes to the borrower, it being for consumption, and he being bound to restore, not the same thing, but other things of the same kind. Thus, if corn, wine, money, or any other thing which is not intended to be returned, but only an equivalent in kind, is lost or destroyed by accident, it is the loss of the borrower; for it is his property, and he must restore the equivalent in kind, *the maxim ejus est periculum, cujus est dominium*—applying to such cases. In a *mutuum* the property passes immediately from the *mutant* or lender to the *mutuary* or borrower, and the identical thing lent cannot be recovered or redemanded. Jones Bailm. 64.

My, (in a will). 8 Watts (Pa.) 335.

MY CERTIFICATES, (in a will). 11 Wall. (U. S.) 382.

MY CHILDREN, (in a will, when excludes after-born children). 11 Johns. (N. Y.) 337.

MY ESTATE, (in a will). Myr. (Cal.) 133; 1 Jac. & W. 582, 585.

MY FAMILY, (in a will). Turn. & R. 153, 156.

MY HALF PART, (in a will). 11 East 108.

MY HOUSE AND ALL THAT SHALL BE IN IT AT MY DEATH, (in a will). 11 Ves. 662; 8 Com. Dig. 468.

MY NEAREST SURVIVING RELATIONS, (in a will). 8 Com. Dig. 474.

MY PROPERTY, (in a will). 17 Johns. (N. Y.) 281.

MY REAL AND PERSONAL ESTATE, (in a will). 4 Ves. 766.

MY TWENTY-FIVE SHARES, (in a will). 5 Ves. 461.

MY WATCH, (in a will). 1 Atk. 416.

MY WIFE AND CHILDREN, (in a will, excludes children of wife by former marriage). 20 Tex. 731.

MYNSTER-HAM.—Monastic habitation; perhaps the part of a monastery set apart for purposes of hospitality, or as a sanctuary for criminals.—*Anc. Inst. Eng.*

MYSTERY.—An art, trade, or occupation.—*Cowell. See ADDITION.*

MYSTERY, (what employments are). Stark. Cr. Pl. 55.

—— (housewifery is). 1 Browne (Pa.) 197.

MYTACISM.—In rhetoric, the too frequent use of the letter M.—*Encycl. Lond.*

N.

N. L.—*See* NON LIQUET.

NAAM.—The attaching or taking of one's movable goods. It was called *vif* or *mort*, according to whether the chattels were living or dead.—*Termes de la Ley.*

NAIL.—A lineal measure of two inches and a quarter.

NAKED.—*See* NUDE.

NAKED, (defined). 126 Mass. 46.

N.A.M.—(1) Distress; seizure.—*Anc. Inst. Eng.* (2) For; a word frequently used in introducing the quotation of a Latin maxim.

NAMATION.—The act of distraining or taking a distress.—*Cowell.*

NAME.—The discriminative appellation of an individual. Proper names are either *christian-names*, as being given at baptism, or *surnames*, from the father. (4 Co. 170. *See* SURNAME.) Names of persons not christened are surnames only. (1 Ld. Raym. 305. As to the name of a bastard, *see* Co. Litt. 36, and 1 Moo. C. C. 402.) As to the designation of parties to bills of exchange by the initials or some contraction of the christian-name, *see* 3 and 4 Wm. IV. c. 42, § 12. A man may have divers names at divers times, but not divers christian-names. (2 Bro. C. C. 170.) Any one may take on himself whatever surname or as many surnames as he pleases, without statutory license. *See* Falconer on Surnames, and 3 Mau. & Sel. 250. *See, also,* MISNOMER; PARTNERSHIP.

NAME, (defined). 8 Cow. (N. Y.) 102, 106.

—— (in a grant). 9 Cow. (N. Y.) 140.

NAME, (mistake of, in a will). 3 Pick. (Mass.) 232.

—— (devise to one on condition of changing his). 1 W. Bl. 607.

—— (variance of a letter in). 3 Cai. (N. Y.) 219.

—— (middle letter is no part of). 1 Hill (N. Y.) 102; 5 Johns. (N. Y.) 84.

—— (use of wrong, in publication of marriage bans). 1 Barn. & Ad. 190; 1 Hagg. Cons. 394.

—— (title of dignity is part of). 1 Ld. Raym. 303.

—— (when misspelling is not fatal). 7 Serg. & R. (Pa.) 479; 1 Com. Dig. 60.

NAME AND ARMS CLAUSE.—The popular name in English law, for the clause, sometimes inserted in a will or settlement by which property is given to a person, for the purpose of imposing on him the condition that he shall assume the surname and arms of the testator or settlor, with a direction that if he neglects to assume or discontinues the use of them, the estate shall devolve on the next person in remainder, and a provision for preserving contingent remainders. 3 Dav. Con. 277.

NAME, CHRISTIAN, (the law knows but one). 14 Pet. (U.S.) 322; 2 Cow. (N. Y.) 463.

NAMESAKE, MY, (legacy to). 19 Ves. 381.

NAMIUM.—A distress. 2 Inst. 140.

NAMIUM VETITUM.—An unjust taking of the cattle of another and driving them to an unlawful place, pretending damage done by them. 3 Bl. Com. 149. *See* REPLEVIN.

NANTISSEMENT.—In French law, is the contract of pledge; if of a movable, it is called *gage*; and if of an immovable, it is called *antichrèse*.—*Brown.*

NARR.—A common abbreviation of *narratio*, (q. v.) A declaration in an action.—*Jacob.*

NARRATIO.—A count; a declaration.

NARRATIVE.—In Scotland, that part of a conveyance which contains the description of the grantor, and person in whose favor the grant is made, and which states the cause (consideration) of granting.—*Bell Dict.*

NARRATOR.—A pleader, or reporter.—*Cowell.*

NARROW SEAS.—Those seas which run between two coasts not far apart. The term is sometimes applied to the English channel.—*Wharton.*

NASCITURUS.—Yet to be born; an unborn child. See **NATUS**.

NATALE.—The state and condition of a man acquired by birth.

NATHWYTE.—See **LAIRWIFE**.

NATI ET NASCITURI.—Born and to be born. All heirs, near and remote.

NATIO.—In old records, a native place.—*Cowell.*

NATION.—A people, distinguished from another people, generally by their language, origin, or government; an assembly of men of free condition, as distinguished from a family of slaves.—*Wharton.*

NATION, (defined). 6 Pet. (U. S.) 519.

NATIONAL BANK, or BANKING ASSOCIATION.—A banking institution created under the laws of the United States, as distinguished from a "State bank" which is organized under the law of the State in which it does business. See U. S. Rev. Stat. §§ 5133-5243; 8 Wall. (U. S.) 533.

NATIONAL CHURCH.—The Protestant Church of England, of which the sovereign is the head and supreme governor. 26 Hen. VIII. c. 1; 1 Eliz. c. 1.

NATIONAL CURRENCY.—Notes issued by national banks, and by the United States government. By many, the phrase "national currency" is limited to the first class of notes above mentioned, the term "greenbacks" being applied to the latter class.

NATIONAL CURRENCY OF THE UNITED STATES, (in an indictment). 25 Gratt. (Va.) 965.

NATIONAL DEBT.—The money owing by government to some of the pub-

lic, the interest of which is paid out of the taxes raised by the whole of the public. See **FUND**, § 3.

NATIONAL DEBT, (defined). 2 Steph. Com. 574.

NATIONALITY.—That quality or character which arises from the fact of a person's belonging to a nation or State. Nationality determines the political status of the individual, especially with reference to allegiance (*q. v.*), while domicile determines his civil status. Nationality arises either by birth or by naturalization (*q. v.*) See 8 Sav. Syst. § 346 where "nationality" is also used as opposed to "territoriality" (*q. v.*) for the purpose of distinguishing the case of a nation having no national territory, *e. g.* the Jews; Westl. Pr. Int. Law 5; *Udny v. Udny*, L. R. 1 H. L. (Sc.) 441.

NATIONS, LAW OF.—See **INTERNATIONAL LAW**. The principal offenses against the law of nations are: (1) Violations of safe conducts; (2) infringement of the rights of ambassadors; and (3) piracy. See the works of Grotius, Vattel, and others.

NATIVE CITIZEN.—See **CITIZEN**, § 1.

NATIVES, (defined). 2 Kent Com. 39.

NATIVI CONVENTIONARI. Vileins or bondmen by contract or agreement Leg. II. 1 c. 76.

NATIVI DE STIPITE.—Vileins or bondmen by birth or stock.—*Cowell.*

NATIVITAS.—The servitude, bondage, or villeinage of women.—*Leg. Wm. I.* See **NEFER**.

NATIVO HABENDO.—See **DE NATIVO HABENDO**.

NATIVUS.—A servant born.—*Spr. Gloss.*

NATURA.—Nature.

Natura appetit perfectum; ita et lex (IIob 144): Nature desires perfection; so also law.

Natura non facit saltum; ita, nec lex (Co. Litt. 238): Nature takes no leap; so neither does law.

Natura non facit vacuum, nec lex supervacuum (Co. Litt. 79): Nature makes no vacuum; law no supervacuum.

NATURÆ VIS MAXIMA; NATURA HIS MAXIMA (2 Inst. 564): The force of nature is greatest; nature is doubly greatest.

NATURAL AFFECTION.—That love which one has for his kindred. It is held to be a good consideration for certain purposes. See CONSIDERATION, § 7; COVENANT TO STAND SEIZED.

NATURAL ALLEGIANCE.—That perpetual attachment which is due from all natural-born subjects to their sovereign; it differs from *local* allegiance, which is temporary only, being due from an alien or stranger-born for so long a time as he continues within the sovereign's dominions and protection. Fost. 184. See ALLEGIANCE, § 1.

NATURAL AND REASONABLE WEAR AND TEAR EXCEPTED, (in an agreement for the sale of property). Spenc. (N. J.) 544.

NATURAL-BORN SUBJECT.—See ALLEGIANCE; CITIZENS, § 1; NATIONALITY; NATURALIZATION, § 4.

NATURAL CHILD.—The child in fact; the child of one's body. Some children are both the natural and legitimate offspring of a marriage, *i. e.* those duly born in wedlock. Some are the legitimate but not the natural offspring of a marriage, *i. e.* those who are born in wedlock, and never bastardized, although begotten in adultery and the *natural* children of a stranger. Some are natural children only, *i. e.* bastards, born out of wedlock, and those born in wedlock, who are bastardized, and hence the word is sometimes popularly used as though it were simply equivalent to bastard. (See BASTARD.) The only natural obligation which the law imposes upon the parents of natural children is their maintenance. See 7 and 8 Vict. c. 101, and 8 Vict. c. 10; also, Saunders on Affiliation.

NATURAL DAY.—See DAY, § 1.

NATURAL EQUITY.—That which is founded in natural justice, in honesty and right, and which arises *ex æquo et bono*.—Bouvier.

NATURAL FOOL.—One born an idiot (*q. v.*)

NATURAL FRUITS.—See FRUCTUS NATURALES.

NATURAL GUARDIAN, (when father is). 7 Wheel. Am. C. L. 168; 2 Kent Com. 217.

— (when mother is). 2 Root (Conn.) 320.

— (rights of). 6 Conn. 494; 1 Johns. (N. Y.) Ch. 4; 7 Wend. (N. Y.) 354; 15 Id. 631.

NATURAL HEIR, (in Indiana act of 1855). 9 Am. L. Reg. 747.

NATURAL HEIRS, (in a will). 19 Conn. 112; 78 N. C. 372.

NATURAL INFANCY.—A period of non-responsible life, which ends with the seventh year of a person's age. See CAPAX DOLL.

NATURAL LAW.—See LAW, § 2, and note.

NATURAL LIBERTY.—The power of acting as one thinks fit, unrestrained by any other power than the law of nature. 1 Bl. Com. 125.

NATURAL LIFE.—The period between birth and natural death, as distinguished from civil death (*q. v.*)

NATURAL OBLIGATIONS.—Duties which have a definite object, but are not subject to any legal necessity.—Wharton.

NATURAL PERSONS.—Such as we are formed by the Deity, as distinguished from *artificial* persons or corporations, formed by human laws, for purposes of society and government.

NATURAL PRESUMPTION.—A presumption of fact arising from a probability discerned in a fact, as distinguished from a legal presumption. See PRESUMPTION, § 1.

NATURAL RIGHTS.—Those rights which supplement the direct rights of ownership (*q. v.*) by imposing duties on other persons. Thus, every owner of land has *prima facie* the right to prevent his neighbors from polluting the air passing over his land, and from disturbing, diminishing, or polluting the water flowing through his land. He is also entitled to so much support from his neighbor's land as is necessary to keep his own land at its natural level. These are called "natural

rights," as opposed to acquired rights, such as easements, *profits à prendre*, franchises, &c. Some writers use the term "natural rights" to include all rights arising from ownership, (Phear Rts. W. 7.) but this is inconvenient and unnecessary. See PROPRIETARY RIGHTS. See the various titles; also, ACCESS; AIR; NAVIGATION; SUPPORT; WATER.

Naturale est quidlibet dissolvi eo modo quo ligatur (Jenk. Cent. 66): It is natural for a thing to be unbound in the same way in which it was bound.

NATURALIZATION.—

§ 1. This takes place when a person becomes the subject or citizen of a state to which he was before an alien. The effect of naturalization is that the naturalized subject or citizen thereby acquires all political and other rights, powers and privileges, and becomes subject to all obligations to which natural-born members of the state are entitled and subject, except that, according to English law, he cannot divest himself of his obligations towards the state of which he was formerly a subject, without the consent of that state. See EXPATRIATION.

§ 2. *English procedure.*—An alien becomes a naturalized British subject by obtaining a certificate of naturalization from a secretary of state in accordance with the provisions of the Naturalization Act, 1870, which enlarges the powers given by 7 and 8 Vict. c. 66; a special certificate of naturalization may be obtained for the purpose of quieting doubts as to the right of a person to be a British subject (§ 7). (Cutler Naturalization; Black-Dict.; Holtz. Encycl.) Since the passing of the above mentioned acts, naturalization by private act of parliament, which was formerly the only method of becoming naturalized (1 Bl. Com. 374), has become unusual save in exceptional cases. Rep. on Natur. App. 8.

§ 3. *American procedure.*—By the constitution of the United States, (Art. I., § 8,) the power to establish a uniform system of naturalization is vested in congress, and various laws have been passed by that body from time to time, in pursuance of this authority. See U. S. Rev. Stat. §§ 2165-2174.

§ 4. The term "naturalization" is also sometimes applied to that operation of law by which the children and grandchildren born abroad of natural-born subjects or citizens, are themselves natural-born subjects or citizens "to all intents, constructions and purposes." Stat. 7 Ann. c. 5; 13 Geo. III. c. 21; as to the proper construction of the acts, see Westl. Pr. Int. Law 11. See ALLEGIANCE, § 1; DENIZEN; EXPATRIATION; NATIONALITY.

NATURALIZATION, (power of, is exclusively in congress). 2 Wheat. (U. S.) 259, 269.

NATURALIZED, (*feme covert* may be without her husband's consent). 16 Wend. (N. Y.) 617.

NATURALIZED CITIZEN.—One who, being an alien by birth, has received citizenship under the constitution and laws of the United States.

NATURE, GUARDIAN BY, (rights of). 2 Wend. (N. Y.) 153.

NATURE OF A WILL, (writing in). 1 P. Wms. 741, 742.

NATURE OF INTEREST, (in statute, when includes quantity). Wilberf. Stat. L. 111.

NATURE OR KIND SOEVER, (in a will). 1 II. Bl. 223; 6 T. R. 610.

NATUS.—Born, as distinguished from *nasciturus*, about to be born.

NAUCLERUS.—In the civil law, the master or owner of a merchant vessel. *Cide. Lex.*

NAUFRAGE.—Shipwreck.

NAULAGE.—The freight of passengers in a ship. *Johnson; Webster.*

NAUTÆ.—Sailors; carriers by water.

NAVAGIUM.—A duty on certain tenants to carry their lord's goods in a ship. 1 Mon. Ang. 922.

NAVAL.—Appertaining to the navy (*q. v.*)

NAVAL COURTS.—Courts held abroad in certain cases to inquire into complaints by the master or seamen of a British ship, or as to the wreck or abandonment of a British ship. A Naval Court consists of three, four, or five members, being officers in her majesty's navy, consular officers, masters of British merchant ships or British merchants. It has power to supersede the master of the ship with reference to which the inquiry is held, to discharge any of the seamen, to decide questions as to wages, send home offenders for trial, (Mer. Sh. Act, 1851, § 230 *et seq.*; Maud & P. Mer. Sh. 163,) or try certain offenses in a summary manner. Mer. Sh. Act 1856, § 28.

NAVAL COURTS-MARTIAL.—Tribunals for the trial of offenses arising in the management of public war vessels.

NAVAL OFFICER.—(1) A customs officer of the United States, charged with the duty of estimating customs duties, countersigning permits, clearances, &c., certifying the returns of the collectors, and other similar duties. (*See* U. S. Rev. Stat. § 2626.) (2) One of the officers of a man-of-war.

NAVIGABLE—NAVIGATION.

§ 1. The right of navigation is the right of the public to use an arm of the sea, a river, or other piece of water, as a highway for shipping, boating, &c., including the right to anchor in it. (*Gann v. Free Fishers of Whitstable*, 11 H. L. C. 192; *Couls. & F. Waters* 396.) It is a right of way, and not a right of property, and, therefore, the owner of the bed of a river over which the public have by user acquired a right of navigation may make any erection on it which does not interfere with the navigation warranted by that user. (*Orr Ewing v. Colquhoun*, 2 App. Cas. 839; *Phear Rts. W.* 53. *See* HIGHWAY.) In the case of estuaries and navigable tidal rivers, however, the beds of which are *primâ facie* vested in the government the ownership of the soil is wholly subject to the public right of navigation, and no part of it can be used so as to derogate from or interfere with that right. (*Couls. & F. Waters* 413.) A river which is subject to a right of navigation is said to be "navigable." As to navigation on the sea, *see* HIGH SEAS.

§ 2. The question whether a river is navigable or not seems to depend partly on its size and the formation of its bed, and partly on the use to which it has been put. If a river will admit ships, and it has been used for shipping purposes by the public, it is a navigable river, whether it be tidal or non-tidal, and whether it flow through or over private land or land belonging to the sovereign. (*See* *Hale De Jur. Mar.* part i. c. 3; *Lyon v. Fishmongers' Co.*, 1 App. Cas. 662; *Original Hartlepoole Collieries Co. v. Gibb*, 5 Ch. D. 713.) As a rule, however, an arm of the sea or a tidal river with a broad and deep channel is navigable. *Couls. & F. Waters* 413.

§ 3. Where the public have acquired the right of navigation on a private or non-tidal river, the original exclusive right of the riparian owners to fish in it is not thereby affected, in England. *Id.* 59. *See* FISHERY.

§ 4. Obstructing the navigation of a navigable water is a public nuisance. *Id.* 421. *See* NUISANCE.

NAVIGABLE, (defined). 28 Ind. 257, 270; 5 Wend. (N. Y.) 460; 23 Ohio St. 523.

NAVIGABLE RIVER, (defined). 6 Cow. (N. Y.) 518, 528; 1 Campb. 517 n.

— (what is). 3 Mass. 267; 5 Pick. (Mass.) 199; 3 Greenl. (Me.) 269; 7 Me. 273; 42 Pa. St. 219, 230; 1 McCord (S. C.) 580; Ang. Waterc. § 535; 2 Barn. & Ald. 662; 1 Marsh. 313; 5 Taunt. 705; 7 Com. Dig. 291.

— (what is not). Sax. (N. J.) 187; 2 Stockt. (N. J.) 211; 2 Binn. (Pa.) 475, 479; 4 Barn. & C. 598.

— (is a public highway). Sax. (N. J.) 369.

— (rights of the public in). 13 Wend. (N. Y.) 355; 8 Wheel. Am. C. L. 369.

— (rights of owners of land on). 5 Paige (N. Y.) 143, 157; 17 Wend. (N. Y.) 591; 7 Com. Dig. 781.

— (right of fishing in). 2 Conn. 481; 17 Johns. (N. Y.) 211; 20 *Id.* 98; 1 Wend. (N. Y.) 237; 5 Wheel. Am. C. L. 414.

NAVIGABLE STREAM, (what is). 1 McLean (U. S.) 337; 3 Metc. (Mass.) 202; 21 Pick. (Mass.) 344; 2 Dev. (N. C.) L. 30; 2 Swan (Tenn.) 9.

— (what is not). 28 Ind. 257, 270; 50 Me. 479; 6 Barb. (N. Y.) 265.

NAVIGABLE WATERS, (defined). 1 Pick. (Mass.) 180, 181.

— (synonymous with "tide waters"). 108 Mass. 447.

— (not synonymous with "natural streams"). 1 Newb. (U. S.) Adm. 101.

— (what are). 20 Conn. 227; 108 Mass. 436; 19 N. Y. 523.

— (what are not). 20 Conn. 217.

— (in United States constitution). 3 Cow. (N. Y.) 743, 755.

— (in Comp. L. § 5944). 8 Mich. 320.

NAVIGABILITY, (the test of). 3 Iowa 1; 3 Dev. (N. C.) L. 59.

NAVIGATION, (defined). 9 Barn. & C. 820.

— ("commerce" comprehends). 9 Wheat. (U. S.) 190, 215.

— (in United States revised statutes). 9 Ben. (U. S.) 339.

NAVIGATION ACTS.—Various statutes (especially 12 Car. II. c. 18) passed for the encouragement and protection of British shipping by excluding foreign ships from trading with British colonies and even with Great Britain. They have now been almost wholly repealed, the principal exceptions being certain provisions designed to enforce reciprocity in commerce between British and foreign countries, &c. to prevent British shipping from being placed at a disadvantage in foreign countries;

for this purpose the privy council has power to impose retaliatory restrictions and duties on foreign shipping. 3 Steph. Com. 143; Stat. 16 and 17 Vict. § 324 *et seq.*; Customs Consolidation Act, 1876.

NAVIGATION, RULES OF.—

The sailing and steering rules which prescribe the course to be taken by sailing vessels and steamships upon meeting each other, especially when there is any risk of collision between them. These rules have been established in England partly by statute, partly by the Trinity House, and partly by the Board of Trade. (Kay Sh. & S.; Maud & P. Mer. Sh.) For the American rules consult the revised statutes of the United States, and the cases referred to in Rap. Fed. Ref. Dig., title COLLISION.

NAVY.—An assemblage of ships, commonly ships of war; a fleet; the war ships, and their armaments, used for the defense of a nation, or waging its wars, upon the sea.

NAVY, (in a libel). 1 Saund. 243 n.
— (in a treaty). 6 How. (U. S.) 92, 100.

NAVY BILLS.—Bills drawn by officers of the English navy for their pay, &c. It is a felony to forge them. 11 Geo. IV. and 1 Will. IV. c. 20, § 83.

NAVY DEPARTMENT.—One of the executive departments of the general government of the United States, presided over by the secretary of the navy (see CABINET), and having in charge the defense of the country by sea, by means of ships of war and other naval appliances.

NAVY YARD, (includes what). 1 Hughes (U. S.) 588.

NAZERANNA.—A sum paid to government as an acknowledgment for a grant of lands, or any public office. *Encycl. Lond.*

NE.—Not. A Latin negative occurring in several maxims and phrases, such as the following—

NE ADMITTAS.—That you admit not. A prohibitory writ directed to the bishop at the request of the plaintiff or defendant, where a *quare impedit* is depending, when either party fears that the bishop will admit the other's clerk during the suit between them; it ought to be issued within six calendar months after the avoidance, before the bishop may present by lapse; for it is in vain to sue out this writ when the title to present has devolved upon the bishop.—*F. N. B.* 37.

NE BAILA PAS.—He did not deliver. A plea by the defendant in detinue.

NE DISTURBA PAS.—The general issue in *quare impedit*. It simply denied that the defendant obstructed the presentation, and was adapted to no other ground of defense.

NE DONA PAS, or NON DEDIT.—The general issue in a formelon, now abolished. It denied the gift in tail to have been made in manner and form as alleged; and was, therefore, the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case. 5 East 289.

NE EXEAT.—A writ which issues from a court of equity to restrain a person from going out of the country without the leave of the court. It is a high prerogative writ, which was originally applicable, in England, to purposes of state only, but was afterwards extended to private transactions. (Dan. Ch. Pr. 1518; Hunt. Suit 145; Sobey v. Sobey, L. R. 15 Eq. 200; Beam. No Ex.; Rules of Court (August, 1875,) r. 10.) It is employed when a person, against whom another has an equitable claim for a sum of money actually due, is about to leave the country for the purpose of evading payment, and the absence of the defendant would materially prejudice the plaintiff in the prosecution of his action. (Drover v. Beyer, 13 Ch. D. 242. See Debtors' Act, 1869, § 2.) In American practice, it is little more than a mere process of holding to bail, and in New York has been altogether abolished, a simple order of arrest being considered an equally sufficient remedy.

NE INJUSTE VEXES.—A writ founded on Magna Charta that lay for a tenant distrained by his lord, for more services than he ought to perform; and it was a prohibition to the lord unjustly to distrain or vex his tenant; in a special use it was where the tenant had prejudiced himself by doing greater services or paying more rent, without constraint, than he needed; for, in that case, by reason of the lord's seisin, the tenant could not avoid it by warranty, but was driven to his writ for remedy. *F. N. B.* 10. Abolished by 3 and 4 Wm. IV. c. 27, § 35.

NE LUMINIBUS OFFICIATUR.—A servitude restraining the owner of a house from obstructing the light of his neighbor.

NE RECIPIATUR.—A caveat entered by a defendant to prevent a plaintiff from trying his cause at a certain sittings, where the cause was not entered in due time. R. 43, H. T. 1853.

NE RECTOR PROSTERNET ARBORES.—The Stat. 35 Edw. I. s. 2, prohibiting rectors, &c. parsons, from cutting down the trees in churchyards. In *Rutland v. Green*, 1 Keb. 557, it was extended to prohibit them from opening new mines and working the minerals therein.—*Brown*.

NE RELESSA PAS.—He did not release. A replication to defendant's plea of release.

NE UNQUES ACCOUPLE IN LOYAL MATRIMONIE.—A plea whereby a tenant in the real action of dower *unde nihil*, controverted the validity of the defendant's marriage with the person out of whose estate she claimed dower. To this plea, the defendant replied that she was accoupled in lawful matrimony at A., in such a diocese, upon which a writ issued to the bishop of such diocese, requiring him to certify the fact to the court. Co. Ent. 180.

NE UNQUES EXECUTOR.—The plea by which, under the common law practice, a person sued as executor of a deceased person denies that he filled that office—similarly with the plea *ne unques administrator*. Wms. Ex. 1794.

NE UNQUES SEISIE QUE DOWER.—A plea in dower which was often called the "general issue," but it did not seem to fall strictly within the definition of that term. It did not, properly speaking, contain any denial or traverse of the count, and must, therefore, be considered as an anomaly or exception in the system of pleading. See Com. L. P. Act, 1860, §§ 25, 27.

NE VARIETUR.—That it be not changed. A phrase sometimes written by a notary upon a bill or note, the better to identify it. Its negotiability is not thereby diminished.

NEAR, (in a statute). 1 Cai. (N. Y.) 177; 18 Johns. (N. Y.) 397; 19 Wend. (N. Y.) 56; 1 W. Bl. 20; Dwar. Stat. 748; Willerf. Stat. L. 249.

— (in subscription of stock). 44 Mo. 197, 202.

— (in a will). 1 Moo. 274.

NEAR AN ELECTION GROUND, (in a statute). 3 Heisk. (Tenn.) 315.

NEAR, AT, IN OR, (in a devise). 3 Barn. & Ad. 453.

NEAR, AT OR, (in a charter). 5 Allen (Mass.) 221.

NEAR THE MOUTH OF THE RIVER, (in a call). 8 Pet. (U. S.) 84.

NEAR OPEN PORT, (in insurance policy). 7 Johns. (N. Y.) 363.

NEAR THE PLACE, (in a statute). 14 East 267.

NEAR RELATIONS, (in a will). 2 Ves. Sr. 520; 2 Com. Dig. 655.

NEAR TO SUCH FITS, (in a plea). Willes 362.

NEARER OF KIN, (who is). 1 Ld. Raym. 684; 1 Salk. 251.

NEAREST, (in a statute). 105 Mass. 304.

NEAREST OF KIN, (in a deed). 3 Barn. & Ald. 474.

NEAREST OF KIN, (in a will). 8 Jur. 161.

NEAREST OF KIN OF MY OWN FAMILY, (in a will). 5 Myl. & C. 108.

NEAREST OF MY KINDRED, (in a will). 15 Ves. 92.

NEAREST PUBLIC THOROUGHFARE, (in licensing act). 1 Q. B. D. 1, 3.

NEAREST RELATIONS, (in a will). 1 Taunt. 269.

NEAREST RELATIVE, (in a will). Amb. 70.

NEARLY, (in a grant). 2 Wheat. (U. S.) 211.

NEARLY AS POSSIBLE, AS, (in a declaration of the performance of a covenant). 8 Wend. (N. Y.) 399.

NEARLY TWO ACRES, (in a description of land). 4 Leigh (Va.) 627.

NEAT, or NET.—The exact weight of a pure commodity alone, without the cask, bag, dross, &c. See **NET PRICE**; **NET PROFITS**.

NEAT CATTLE.—Oxen or heifers.

NEAT CATTLE, (defined). 32 Tex. 479.

— (in a promissory note). 1 N. H. 95; 7 Johns. (N. Y.) 321.

NEAT-LAND.—Land let out to the yeomanry.—*Cowell*.

NEAT PROFITS, (in an agreement). 13 East 538, 543.

Nec tempus nec locus occurrit regi (Jenk. Cent. 190): Neither time nor place affects the king.

NECATION.—The act of killing.

NECESSARIES.—

§ 1. **Infant.**—Notwithstanding the general rule that an infant is incapable of binding himself by a contract, he may make a contract for necessities: and the word "necessaries" is not confined in its strict sense to such articles as are necessary to the support of life, but extends to articles fit to maintain the particular person in the state, degree and station of life in which he is. Co. Litt. 172a; Chit. Cont. 138; Poll. Cont. 46; *Peters v. Fleming*, 6 Mees. & W. 46; *Ryder v. Wombwell*, L. R. 4 Ex. 32. See **INFANT**.

§ 2. **Lunatic.**—The same doctrine applies to lunatics. Pope Lun. 239; Poll. Cont. 74; *Baxter v. Earl of Portsmouth*, 5 Barn. & C. 170; 7 Dowl. & Ry. 614.

§ 3. **Married woman.**—As a general rule, every wife has an implied authority to contract with tradesmen for necessities suitable to the degree and estate of her husband, so as to make him liable to the

tradesmen, unless he has sufficiently supplied her with articles of the kind in question, or unless she has a separate income. If the husband and wife are living together, this authority is implied; in the case of ordinary household necessities, from the usual practice of persons in the particular class of life, according to which a wife has the management of such matters; if, therefore, the husband wishes to put an end to this authority, he must give notice to the tradesmen that it is withdrawn. But this principle does not apply to such things as dresses, jewelry, &c.; and, therefore, the husband need not give notice to the tradesmen that his wife has no authority to pledge his credit for such things, unless, by his previous conduct (as by habitually allowing his wife to purchase such things on credit and by paying for them), he has given her an implied authority to do so. Where, however, the husband turns the wife out of doors, or so conducts himself that she is obliged to leave him, he is under a legal duty to maintain her; and if he does not do so, she has power to provide for herself at his expense, by pledging his credit for necessities, such as food, apparel, lodging, &c. And as this authority is conferred on her by the law, and not by the husband, he cannot revoke or destroy it. (*Debenham v. Mellon*, 5 Q. B. D. 398; S. C., 6 App. Cas. 24.) The older authorities (*Manby v. Scott*, *Montague v. Benedict*, *Jolly v. Rees*, &c.,) will be found fully discussed in 2 Sm. Lead. Cas. 429.

§ 4. **Merchant shipping.**—In the case of ships, the term "necessaries" means such things as are fit and proper for the service in which the ship is engaged, and such as the owner, being a prudent man, would have ordered if present; *e. g.* anchors, rigging, repairs, victuals. (*Maud & P. Mer. Sh.* 71, 118.) The master may hypothecate the ship for necessities supplied abroad so as to bind the owner. *Id.* 68. See **BOTTOMRY**; **RESPONDENTIA**.

§ 5. **Criminal law.**—In criminal law, the willful neglect to provide necessities for children or apprentices is a misdemeanor. Stat. 24 and 25 Vict. c. 100, § 26; 31 and 32 Vict. c. 122, § 37. See, also, the statutes passed to prevent parents from allowing their children to become charge-

able to the parish. 2 Steph. Com. 290 *et seq.*; and consult the statutes of the several States.

NECESSARIES, (defined). 18 Conn. 423; 5 Bush (Ky.) 61; 38 Iowa 166.

— (what are, generally). 31 Conn. 306; 42 *Id.* 203; 9 Allen (Mass.) 106; 54 N. H. 539; 7 Serg. & R. (Pa.) 259, 260.

— (what are not). 40 Conn. 75; 1 N. Y. Leg. Obs. 322.

— (for which husband is chargeable). 57 Ala. 320; 17 B. Mon. (Ky.) 555, 556; 7 Bush (Ky.) 157; 2 Mete. (Ky.) 253; 3 *Id.* 331; South. (N. J.) 773; 1 Mod. 124, 139.

— (for an infant, what are). 12 Cush. (Mass.) 512; 3 Wheel. Am. C. L. 341; 6 *Id.* 41; 7 *Id.* 32, 113; 3 Car. & P. 114; 2 Esp. 211; 1 Holt 77; 1 Str. 108, 173.

— (liability of infant for). 70 N. C. 110; 7 Wheel. Am. C. L. 183; Cro. Jac. 491; Reeve Dom. Rel. 227; Long Sales 4.

— (for a ship). 7 Ben. (U. S.) 418; 4 Barn. & Ald. 352; L. R. 1 A. & E. 20; 3 *Id.* 522.

— (in a bill of sale of a vessel). 3 Duer (N. Y.) 363.

— (in bankrupt act). 5 Ben. (U. S.) 230; 2 Low. (U. S.) 180.

NECESSARIES FURNISHED HIM OR HIS FAMILY, (in a statute). 61 Me. 523.

Necessarium est quod non potest aliter se habere (Bacon): That which is necessary cannot be otherwise.

NECESSARY, (defined). 2 A. K. Marsh. (Ky.) 75, 80; 8 Allen (Mass.) 1, 6; 2 Mo. App. 105, 115.

— (in railroad charter). 9 C. E. Gr. (N. J.) 223; 6 Vr. (N. J.) 537; 7 *Id.* 95, 168.

— (in a statute). 27 Ind. 191; 4 Cush. (Mass.) 359; 8 Vr. (N. J.) 61; 15 N. Y. 9, 168.

— (not synonymous with "indispensable"). 2 Duv. (Ky.) 26.

— (in constitution of United States). 23 Ind. 141.

— (equivalent to "public convenience requires"). 5 R. I. 325.

— (means "reasonably necessary"). 12 R. I. 227, 232.

NECESSARY AND PROPER, (in United States constitution). 4 Wheat. (U. S.) 316, 413.

NECESSARY AND USEFUL FOR PUBLIC OR PRIVATE PURPOSES, (in railroad act). 3 Pittsb. (Pa.) 504.

NECESSARY APPARATUS, (defined). 7 J. J. Marsh. (Ky.) 113.

NECESSARY CHARGE, (defined). 3 Mo. 191.

NECESSARY CHARGES, (in a statute). 112 Mass. 1, 3; 18 Johns. (N. Y.) 212.

NECESSARY DISBURSEMENTS, (includes what). 3 How. (N. Y.) Pr. 280.

— (in a statute). 21 Wis. 54.

NECESSARY DOMICILE.—See **DOMICILE**, §§ 5, 6.

NECESSARY EXPENSES, (in a statute). 4 Pet. (U. S.) 171.

NECESSARY FOR SUPPORT OF LIFE, (in a statute). 24 Conn. 333, 346.

NECESSARY FOR SUPPORTING LIFE, (in a statute). 43 Conn. 528.

NECESSARY IMPLICATION, (defined). 1 McCart. (N. J.) 70; 1 Ves. & B. 422, 466.

NECESSARY JOINER'S WORK, (what includes). 5 Mart. (La.) 336.

NECESSARY OUTGOINGS, (which trustee may deduct). L. R. 1 Ex. 288.

NECESSARY PROVISIONS, (in a statute). 16 Gray (Mass.) 211.

NECESSARY REPAIRS, (what are). 3 Sumn. (U. S.) 223; Sax. (N. J.) 123, 139; 1 Ball & B. 385; 1 Bos. & P. 303, 305.

NECESSARY TEAM, (physician's horse is). 5 How. (N. Y.) Pr. 283.

NECESSARY TOOLS OF TRADE, (in a statute). 2 Whart. (Pa.) 26, 31.

NECESSITAS.—Necessity (*q. v.*)

NECESSITAS CULPABILIS.—A blamable necessity. As the necessity which compels one to kill another in self defense. See HOMICIDE, § 3.

Necessitas est lex temporis et loci (Hale P. C. 54): Necessity is the law of time and place.

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus (Bacon): Necessity excuses or extenuates a delinquency in capital cases, which has not the same operation in civil cases.

Necessitas facit licitum quod alias non est licitum (10 Co. 61): Necessity makes that lawful which otherwise is not lawful.

Necessitas inducit privilegium quoad jura privata (Bac. Max. 25): Necessity gives a privilege with reference to private rights. The necessity involved in this maxim is of three kinds, viz.: (1) Necessity of self-preservation; (2) of obedience; and (3) necessity resulting from the act of God, or of a stranger.—*Noy's Max.* 32.

Necessitas non habet legem (Plowd. 18): Necessity has no law.

Necessitas publica major est quam privata (Bacon): Public necessity is greater than private. "Death," it has been observed, "is the last and furthest point of particular necessity, and the law imposes it upon every subject, that he prefer the urgent service of his king and country before the safety of his life."—*Noy's Max.* 34.

Necessitas quod cogit, defendit (Hale P. C. 54): Necessity defends what it compels.

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum (2 Inst. 326): Necessity is not restrained by law; since, what otherwise is not lawful, necessity makes lawful.

Necessitas vincit legem; legum vincula irridet (Hob. 144): Necessity overcomes law; it derides the fetters of laws.

NECESSITY.—

§ 1. A constraint upon the will, whereby a person is urged to do that which his judgment disapproves, and which, it is to be presumed, his will (if left to itself) would reject. A man, therefore, is excused for those actions which are done through unavoidable force and compulsion.

§ 2. Compulsion or necessity may arise (1) from civil subjection; (2) from duress *per minas*; (3) from the choice of the less pernicious of two evils, one of which is unavoidable, or (4) from want or hunger, which is, however, no legitimate excuse. 4 Bl. Com. 27.

NECESSITY, (defined). 1 Blatchf. & H. (U. S.) 465, 470; 56 Miss. 36; 47 Vt. 28, 32.

— (nearly synonymous with "expediency"). 7 Cow. (N. Y.) 583, 606.

— (when it will excuse a violation of the law). 3 Wheat. (U. S.) 63.

— (in a trustee's bond). 10 Johns. (N. Y.) 359.

— (right of way from). 2 McCord (S. C., 444; 1 Saund. 323 n.

NECESSITY, HOMICIDE BY.—

A species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention or desire, and without any inadvertence or negligence in the party killing, and, therefore, without any shadow of blame. As, for instance, by virtue of such an office as obliges one, in the execution of public justice, to put to death a malefactor who has forfeited his life to the laws of his country. But the law must require it, otherwise it is not justifiable. 4 Bl. Com. 178.

NECESSITY, MORAL, (distinguished from a "legal" or "physical" necessity). 4 Car. & P. 276, 282.

NECESSITY OR CHARITY, (in Sunday law). 55 Ga. 126, 128; 31 Ind. 189; 65 Me. 34; 4 Cmh. (Mass.) 243; 17 Am. Rep. 119, 221; 19 Id. 111, 398, 431; 20 Id. 673; 21 Id. 538.

NEOK-VERSE.—The Latin sentence *miserere mei Deus*, (Ps. li. 1,) because the reading of it was made a test by which to distinguish those who, in presumption of law, were qualified, in point of learning, and admissible to benefit of clergy (*q. v.*)—*Wharton*.

NEED, (in a will). 107 Mass. 474.

NEEDFUL, (authority to attorney to do what is). 4 Esp. 66.

NEFAS.—Wrong; contrary to right, or the divine law. The opposite of *fas* (*q. v.*)

Negatio conclusionis est error in lege (Wing. 268): The denial of a conclusion is error in law.

Negatio destruit negationem et affirmative faciunt affirmativum (Co. Litt. 146): A negative destroys a negative, and both make an affirmative.

Negatio duplex est affirmatio: A double negative is an affirmative.

NEGATIVE.—In general, a negative cannot be proved or testified by witnesses. (2 Inst. 662.) But this rule does not apply where one party charges another with a culpable omission or breach of duty. In such a case, the person who makes the charge is bound to prove it, though it may involve a negative, for it is one of the first principles of justice not to presume that a person has acted illegally till the contrary is proved. Where the presumption of law is in favor of a defendant, then the plaintiff must disprove the defense, though he may have to prove a negative. 1 Phil. Ev. c. vii. § 4.

NEGATIVE AVERMENT.—As opposed to the traverse or simple denial of an affirmative allegation, a negative averment is an allegation of some substantive fact, *e. g.* that premises are not in repair, which although negative in form is really affirmative in substance, and the party alleging the fact of non-repair must prove it.—*Brown*.

NEGATIVE CONDITION.—A condition where the thing which is the subject of it must not happen.—*Bouvier*.

NEGATIVE PREGNANT.—In pleading, a negative pregnant is where a person gives an evasive answer to an allegation of his opponent by answering it literally, without answering the substance of it. Thus, if it is alleged that A. received a certain sum of money, and he denies that particular amount, this is a negative

pregnant, because the substance of the allegation is the receipt of some money, and not the particular amount received. A. should, therefore, answer either that he did not receive any money at all, or state how much he received. Similarly, when something is alleged to have happened under certain circumstances, it is not sufficient to deny that it happened under those particular circumstances; but the party must state whether it happened at all.

NEGATIVE STATUTE.—A statute which is expressed in negative terms; one which prohibits the doing of a thing, or declares what shall *not* be done.

NEGATIVE WORDS, (in a statute). 7 Barn. & C. 12; 9 Dowl. & Ry. 772.

NEGGLDARE.—To claim kindred.—*Jacob*.

NEGLECT, (defined). 54 N. Y. 262.

— (what is). 2 Grant (Pa.) Cas. 60, 65.

— (as meaning "culpable neglect"). 2 Dowl. & Ry. 238.

NEGLECT OR REFUSE, (in a deed). 4 Cush. (Mass.) 185.

NEGLECT OR REFUSE TO PAY, (in a statute). 3 Gray (Mass.) 224.

NEGLIGENCE.—

§ 1. **Negligence** is want of proper care, and may consist in doing something which ought not to be done, or in not doing something which ought to be done.* The legal effect of negligence is either civil or criminal.

In civil law, negligence may operate either to create or to defeat a right of action.

§ 2. **Towards strangers**.—Negligence which creates a right of action is a species of tort or injury giving rise to a right to damages, and may exist either (1) where the parties are strangers, or (2) where they stand in a special relation to one another. To the first class belong those cases where one person by want of care in the use of his own property, or in the pursuit of his own private advantage or pleasure, causes injury to some one else. (Campb. Neg. 25.) Thus, a person who keeps his build-

*See *Smith v. L. & S. W. Rail. Co.*, L. R. 5 C. P. 102; *Underh. Torts* 135. Mr. Campbell (Law of Negligence, *passim*.) follows Austin in defining negligence as the state of mind of the doer or omitter; but in ordinary parlance negli-

gence means both the state of mind and the act or omission, and there is no reason why it should not. One without the other would give no right of action.

ings in a bad state of repair, is liable for any injury caused thereby to a person having a right to be in or near them.* So where a man's land is subject to an easement for the support of the buildings on his neighbor's land, and he excavates his land, so that the buildings are injured, he is liable to an action, no matter how carefully he may have done it; hence, this kind of negligence (meaning the invasion of a *jus in rem*) is sometimes called "negligence in law," to distinguish it from "negligence in fact." Gale Easem. 394.

§ 3. **Arising from contract—Slight, ordinary, and gross.**—To the second class belong those cases in which a person by entering into a contract with another puts himself under an obligation to exhibit a certain degree of care, and fails to do so, whether the obligation is created by the contract itself or is imposed by law. It is with reference to these cases that the division of negligence into slight, ordinary and gross, becomes important. Thus, the general rule in the law of bailment (*q v.*) is that when a bailment is made for the sole benefit of the bailee, he is liable for slight negligence; when it is made for the benefit of both, he is liable for ordinary negligence; and when it is made for the sole benefit of the bailor, the bailee is only liable for gross negligence. (*Coggs v. Bernard*, 1 Sm. Lead. Cas. 147.) Ordinary negligence is the want of that care which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would presumably have exercised under the circumstances of the particular case (*Smith v. L. & S. W. Rail. Co.*, L. R. 5 C. P. 102); and slight negligence is the want of a greater degree of care.

§ 4. **Gross negligence in concreto.**—The term "gross negligence" is chiefly used to mean, not that the person accused of it has used less care than a reasonable man would have used, but that he has used less care than he himself would presumably have used if he had been acting in his own affairs, so that what would be gross negligence in a prudent

man may not be so in a reckless one. Thus, if a man for his own convenience places goods for safe-keeping, without reward, with a man who "is an idle, careless, drunken fellow, and comes home drunk, and leaves all his doors open, and by reason thereof the goods happen to be stolen and his own, yet he shall not be charged, because it is the bailor's own folly to trust such an idle fellow." (*Coggs v. Bernard*, 1 Sm. Lead. Cas. 155) The modern civilians distinguish negligence with reference to the individual and negligence with reference to the *diligens paterfamilias* as *culpa in concreto* and *in abstracto*. Kuntze, *Cursus des R. R.* 481.

§ 5. — **in abstracto.**—It is, however, also used to signify the want of that skill and care which persons exercising certain employments are bound to exhibit, even when they act gratuitously, as in the case of physicians, attorneys, &c.; it is, therefore, ordinary negligence committed by a gratuitous agent or bailee; the term "gross" seems to have been applied to these cases in order not to disturb the symmetry of the rule that a gratuitous agent is only liable for gross negligence. See *Campb. Neg.* 15; 1 Sm. Lead. Cas. 615.

§ 6. **Negligence by estoppel, and contributory negligence.**—Negligence operating to defeat a right of action is either negligence amounting to estoppel (as to which see *ESTOPPEL*, § 5), or contributory negligence, which occurs where the injury complained of has been caused partly by the negligence of the plaintiff and partly by that of the defendant: thus, if A. and B. are both driving negligently, and their carriages come into collision, so that A. is injured, he cannot sue B. if his own negligence contributed to the accident, *i. e.* if he could by ordinary care have avoided the consequence of the other's negligence. *Dic. Part.* 412; *Oppenheim v. White Lion Hotel Co.*, L. R. 6 C. P. 515; 1 Sm. Lead. Cas. 298; *Campb. Neg.* 179.

§ 7. **Criminal law.**—As to the effect of negligence in criminal law, see *HOMICIDE*. See, also, *ACT OF GOD*; *SCIENTER*.

* *Terry v. Ashton*, 1 Q. B. D. 314. See, also, *Mersey Docks Trustees v. Gibbs*, L. R. 1 H. L. 93; *Rylands v. Fletcher*, L. R. 3 H. L. 330 (negligent use of property); *Worth v. Gelling*, L. R.

2 C. P. 1 (negligent keeping of a ferocious dog), *Gautret v. Egerton*, L. R. 2 C. P. 371 (distinction between invitation to use dangerous property and mere license or permission).

NEGLIGENCE, (defined). 15 Wall. (U. S.) 524; 29 Ala. 302; 34 Cal. 63; 37 *Id.* 409, 423; 29 Iowa 99; 10 Bush (Ky.) 677; 48 N. H. 41; 5 Den. (N. Y.) 255, 266; 1 Duer (N. Y.) 571, 583; 4 N. Y. 349; 35 Pa. St. 60; 3 Phil. (Pa.) 76; 9 N. W. Rep. 192; 36 Eng. L. & Eq. 506.

— (what is). 32 Barb. (N. Y.) 144; 62 *Id.* 150; 6 Phil. (Pa.) 587; 70 N. C. 380.

— (what is not). 17 Ill. 169.

NEGLIGENCE, CONTRIBUTORY, (defined). 36 Iowa 462.

NEGLIGENCE, GROSS, (defined). 6 El. & B. 891, 899.

— (what is). 3 Campb. 4.

— (what is not). 17 Mass. 501, 507.

— (who guilty of). 13 Serg. & R. (Pa.) 318, 319.

— (in an insurance policy). 73 Ill. 230.

NEGLIGENCE, ORDINARY, (defined). 1 Edw. (N. Y.) 513, 543.

NEGLIGENCE, WILLFUL, (what constitutes). 20 Ill. 235.

NEGLIGENT ESCAPE.—The escape of a person from the custody of the sheriff or other officer. *See* ESCAPE, § 3.

Negligentia semper habet infortunium comitem (Co. Litt. 246): Negligence always has misfortune for a companion.

NEGLIGENTLY PROVIDED, (in a declaration). 4 Wheel. Am. C. L. 195.

NEGOCE.—Business; trade; management of affairs.

NEGOTIABLE.—

§ 1. An instrument is said to be negotiable when any person who has acquired it in good faith and for value can enforce the contract or right of property of which it is evidence against the person originally liable on it, although the person from whom he acquired it may have had a defective title, or none at all. In the first of these respects, negotiable instruments were always an exception to the rule that choses in actions are not assignable (a rule which can now be hardly said to exist); and, in the latter respect, they are an exception to the rule which denies to the transferee of property a title superior to that of the person from whom he receives it. (Sol. J., July 10th, 1875, 687; Sm. Merc. Law 199; *Miller v. Race*, 1 Burr. 452; 1 Sm. Lead. Cas. 538; *Crouch v. Crédit Foncier of England*, L. R. 8 Q. B. 374; *Re Agra and Masterman's Bank*, L. R. 2 Ch. 397; *Fuentes v. Montes*, L. R. 3 C. P. 276.) Moreover, the benefit of the contract or other right is attached to the possession of the document, which, according

to ordinary rules, would be only evidence of the right. (Poll. Cont. 206.) Negotiable instruments are, therefore, altogether anomalous institutions. They exist primarily for the convenience of commerce. *Goodwin v. Roberts*, L. R. 10 Ex. 76, 337; 1 App. Cas. 476; *Rumball v. Metropolitan Bank*, 2 Q. B. D. 194.

Negotiability is either absolute or qualified.

§ 2. **Absolute.**—When an instrument is transferable so as to give the transferee all the rights originally created by it without affecting him with any equities between prior holders, its negotiability is said to be "absolute." An ordinary bill of exchange, promissory note, or check is an instance. Thus, if A., being indebted to B., gives him a promissory note on the condition that it is to be regarded as a security only, and not to be negotiated before a certain time, B. may nevertheless transfer it to C. for value; and if C. has no notice of the arrangement between A. and B., he may enforce payment of it against A. (*Ex parte Swan*, L. R. 6 Eq. 344.) So, if B. steals a bill and transfers it to C. for value, and without notice of the theft, C. may enforce it against the parties liable on it, although B. had in fact no title to transfer.

§ 3. **Qualified.**—When an instrument is transferable only to certain persons, or in a certain manner, or so as to make the transferee take it subject to equities affecting it in the hands of prior holders, while preserving the other incidents of negotiability, its negotiability is said to be "qualified" or "restrained." Thus, in the first instance given above, if the promissory note was transferred after maturity, the transferee would take subject to the arrangement between A. and B. *Ib.*; Sol. J., Dec. 18th, 1875, 134. *See* EQUITY, § 10 *et seq.*; CHECK, § 3 *et seq.*

§ 4. **Quasi-negotiable.**—"Negotiable" is also used in a wide sense to denote an instrument transferable from one person to another by indorsement or delivery, but wanting in the essential of giving the transferee a good title notwithstanding any defect of title in his transferor. This quality is also called "*quasi-negotiability*," to distinguish it from negotiability in the

true sense. *See* DEBENTURE, § 1, note to p. 350; EXCHEQUER BILLS; SCRIP.

NEGOTIABLE, (defined). 19 Ind. 247, 250; 38 Mich. 299.

— (not synonymous with "payable"). 3 Cranch (U. S.) C. C. 698.

NEGOTIABLE BONDS.—*See* MUNICIPAL BONDS; NEGOTIABLE, § 1.

NEGOTIABLE NOTE, (in a statute). 9 Johns. (N. Y.) 120; 19 *Id.* 144; 23 Wend. (N. Y.) 71.

NEGOTIABLE NOTES, (what are not). 14 Pet. (U. S.) 293.

NEGOTIABLE SECURITY, (in a statute). 2 Mass. 524.

NEGOTIATE.—To negotiate a bill of exchange, promissory note, check, or other negotiable instrument for the payment of money, is to transfer it for value by delivery or indorsement. *See* Sharples v. Rickard, 2 Hurlst. & N. 57; Griffin v. Weathersby, L. R. 3 Q. B. 753.

NEGOTIATE, (defined). 6 Gray (Mass.) 420; 69 N. Y. 382, 386.

— (in a statute). 5 Duer (N. Y.) 373.

NEGOTIATION.—Treaty of business, whether public or private.

NEGOTIATION, (defined). 19 Ind. 247, 250.

— (what is not). 10 Pet. (U. S.) 576, 577.

NEGOTIORUM GESTOR.—A person who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, &c.

In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract. But the Roman law raises a *quasi*-mandate, by implication, for the benefit of the owner in many of such cases. Nor is an implication of this sort wholly unknown to the common law, where there has been a subsequent ratification of the acts by the owner; and sometimes where unauthorized acts are done, positive presumptions are made by law for the benefit of particular parties. Thus, if a stranger enter upon a minor's lands, and take the profits, the law will, in many cases, oblige him to account to the minor for the profits as his bailiff; for it will be presumed that he entered to take them in trust for the infant.

As the *negotiorum gestor* interferes without any actual mandate, there is good

reason for requiring him to exert the requisite skill and knowledge to accomplish the object or business which he undertakes; to do everything which is incident to or dependent upon that object or business, and to finish whatever he has begun. Without such an obligation, every person in the community would be at the mercy of ignorant and officious friends. Story Bailm. 204.

NEGRO, (defined). 18 Ala. 720; 5 Jones (N. C.) 11.

— (who is). 9 Ired. (N. C.) 384.

— (who is not). 28 Gratt. (Va.) 939.

NEGROES, (covenant to pay in). 4 Bibb (Ky.) 97.

NEIFHE.—The technical name for a female villein. (Litt. § 186) Originally, however, the word signified a villein of either sex, and "nayfté" meant the status of villein. It is derived from the Latin *nativus*, there having been apparently at one time a distinction between villeins by birth and freemen who had become villeins, *e. g.* by confession in a court of record. Britt. 77 b, and note in Nichol's edit. (p. 195); Loysel Inst. Cout. Gloss. v. Naif. *See* CONFESSION, § 4.

NEIGHBORHOOD, (in a statute). 33 Iowa 484.

— (in an indictment). 1 Com. Dig. 166.

— (in an information). 4 Mau. & Sel. 532.

NEIGHBORHOOD, IMMEDIATE, (what constitutes). 1 Pa. 32, 40.

NEIGHBORING PORT, (what is). 5 Binn. (Pa.) 544, 548.

NEMBDA.—A jury. 3 Bl. Com. 350.

NEMINE CONTRADICENTE.—

This phrase, commonly abbreviated *nem. con.*, is used to signify the unanimous consent of the members of a legislative body to a vote or resolution; it is analogous to the term *nemine dissentiente* (*nem. dis.*) used in the English House of Lords, and also frequently found in the older reports to indicate the unanimity of the judges.

Neminem oportet esse sapientiores legibus (Co. Litt. 97 b): No man ought to be wiser than the laws.

Nemo admittendus est inhabilitare seipsum (Jenk. Cent. 40): No man is to be admitted to incapacitate himself.

Nemo agit in seipsum (Jenk. Cent. 40): No one impleads himself.

Nemo alienæ rei, sine satisfactione, defensor idoneus intelligitur: No man is deemed a competent defender of another's property, without security.

Nemo alieno nomine lege agere potest (D. 50, 17, 123): No one can sue in the name of another.

Nemo allegans suam turpitudinem est audiendus: No one alleging his own baseness is to be heard. The courts of law have properly rejected this as a rule of evidence. 7 T. R. 601.

NEMO ALLEGANS SUAM TURPITUDINEM EST AUDIENDUS, (applied). 1 Cal. (N. Y.) 238, 270; 3 Johns. (N. Y.) Cas. 185, 189, 192.

Nemo cogitur rem suam vendere, etiam justo pretio (4 Inst. 275): No person is obliged to sell his own property, even for the full value.

Nemo contra factum suum venire potest (2 Inst. 66): No one can go against his own deed. See *ESTOPPEL*, § 3.

Nemo dat qui non habet (Jenk. Cent. 250): He who hath not cannot give. See remarks of Willes, J., in *Chidell v. Galsworthy*, 6 Com. B. N. S. 478.

Nemo de domo sua extrahi potest (D. 50, 17, 103): No one can be dragged out of his own house. In other words, every man's house is his castle.

Nemo debet bis puniri pro uno delicto (4 Co. 40, 43): No one ought to be punished twice for the same offense. See 2 Hurlst. & N. 248.

Nemo debet bis vexari, si constat curiæ quod sit pro una et eadem causa (5 Co. 61): No man ought to be twice put to trouble, if it appear to the court that it is for one and the same cause.

In civil actions, the general rule is that the judgment of a court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another court. The exception to this rule is in the action of ejectment. 2 Selw. N. P. 763.

It is also well established in the criminal law, that when a man is indicted for an offense, and acquitted, he cannot afterwards be indicted for the same offense, provided the first indictment was such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment. Arch. Cr. Pl. (17 edit.) 130-4.

Nemo debet esse iudex in propria causa (12 Co. 113): No one should be judge in his own cause.

Nemo debet immiscere se rei ad se nihil pertinenti (Jenk. Cent. 18): No one should intermeddle with a thing that in no respect concerns him.

Nemo debet locupletari aliena jactura: No one ought to be enriched by another's disaster. Cited *per* Bovill, C. J., in *Fletcher v. Alexander*, L. R. 3 C. P. 381.

Nemo debet rem suam sine facto aut defectu suo amittere (Co. Litt. 263 a): No one ought to lose his property without his own act or default.

Nemo duobus utatur officiis (4 Inst. 100): No one should hold two offices—i. e. at the same time.

Nemo ejusdem tenementi simul potest esse hæres et dominus: No one can at the same time be the heir and the owner of the same tenement. See 1 Reeves Hist. Eng. Law 106.

Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit (Broom Max. (5 edit.) 593): No one is able rightly to understand one part before he has again and again read through the whole.

Nemo est hæres viventis: No man is heir of a living person. See *HEIR*, § 7.

NEMO EST HÆRES VIVENTIS, (applied). 6 Stew. (N. J.) 47.

Nemo ex alterius facto prægravari debet: No one ought to be burdened by the act of another.

Nemo ex consilio obligatur: No one is bound in consequence of his advice.

Nemo ex dolo suo proprio relevetur, aut auxilium capiat (Jur. Civ.): Let no one be relieved or gain an advantage by his own fraud.

This rule is set aside in certain cases by several positive enactments of the legislature, as the Statute of Frauds, the English Marriage Act, 3 and 4 Geo. IV. c. 76, § 22. But the judges always lean towards giving effect to the maxim of the civil law.

Nemo ex proprio dolo consequitur actionem (Broom Max. (5 edit.) 297): No one maintains an action arising out of his own wrong.

Nemo ex suo delicto meliorem suam conditionem facere potest (D. 50, 17; 134, § 1): No one can make his condition better by his own misdeed.

Nemo in propria causa testis esse debet (3 Bl. Com. 371): No one ought to be a witness in his own cause.

Nemo inauditus condemnari debet si non sit contumax (Jenk. Cent. 18): No one ought to be condemned without being heard, unless he be contumacious.

Nemo militans Deo implicetur secularibus negotiis (Co. Litt. 70 b): No man who is warring for God should be involved in secular matters.

Nemo nascitur artifex (Co. Litt. 97): No one is born an artificer.

Nemo patriam in qua natus est exuere nec ligeantiae debitum ejurare possit (Co. Litt. 129): No man can disclaim the country in which he was born, nor abjure the bond of allegiance.

Nemo plus commodi heredi suo relinquit quam ipse habuit (D. 50. 17, 120): No one leaves a greater benefit to his heir than he had himself.

Nemo plus juris in alium transferre potest quam ipse habet: No one can confer a better right to another than he has himself. *But see Miller v. Race*, 1 Sm. Lead. Cas. 516.

Nemo potest contra recordum verificare per patriam (2 Inst. 380): No one can verify by the country [*i. e.* by jury] against a record.

Nemo potest esse simul actor et judex (Broom Max. (5 edit.) 117): No one can be at once suitor and judge.

Nemo potest esse tenens et dominus (Gilb. Ten. 142): No one can be tenant and lord.

Nemo potest facere per alium, quod per se non potest (Jenk. 237): No one can do through another what he cannot do through himself.

Nemo potest facere per obliquum quod non potest facere per directum (1 Eden 512): No man can do that indirectly which he cannot do directly.

Nemo potest mutare consilium suum in alterius injuriam (D. 50. 17, 75): No one can change his purpose to the injury of another.

Nemo potest plus juris ad alium transferre quam ipse habet (Co. Litt. 309; Wing. Max. 56): No one can transfer a greater right to another than he himself has.

Nemo præsimitur alienam posteritatem suæ prætulisse (Wing. Max. 285): No one is presumed to prefer the posterity of another to his own.

Nemo præsimitur esse immemor suæ æternæ salutis, et maxime in articulo mortis (6 Co. 76): No one is presumed to be forgetful of his own eternal welfare, and particularly at the point of death.

Nemo præsimitur malus: No one is presumed to be bad.

Nemo præsimitur tudere in extremis: No one is presumed to trifle at the point of death.

Nemo prohibetur plures negotiationes sive artes exercere (11 Co. 54): No one is restrained from exercising several businesses or arts.

Nemo prohibetur pluribus defensionibus uti (Co. Litt. 304a): No one is prohibited from making use of several defenses.

Nemo punitur pro alieno delicto (Wing. Max. 336): No one is punished for another's wrong.

Nemo punitur sine injuria, facto, seu defalto (2 Inst. 287): No one is punished unless for some injury, deed, or default.

Nemo sibi esse judex vel suis jus dicere debet (Broom Max. (5 edit.) 117): No one ought to be his own judge, or the tribunal in his own affairs. *See Wildes v. Russell*, L. R. 1 C. P. 722, 747.

Nemo tenetur ad impossibile (Jenk. Cent. 7): No one is bound to an impossibility.

Nemo tenetur armare adversarium contra se (Wing. Max. 665): No one is bound to arm his adversary against himself.

Nemo tenetur divinare (3 Co. 28): No one is bound to foretell.

Nemo tenetur edere instrumenta contra se: No man is bound to produce writings against himself.

Nemo tenetur informare qui nescit sed quisquis scire quod informat (Branch Pr.): No one is bound to give information about things he is ignorant of, but every one is bound to know that which he gives information about.

Nemo tenetur jurare in suam turpitudinem (Halk. 100): No one is bound to testify to his own baseness.

Nemo tenetur prodere seipsum: No one is bound to betray himself. In other words, no one can be compelled to criminate himself.

Nemo tenetur seipsum accusare (Wing. Max. 486): No one is bound to accuse himself.

Nemo tenetur seipsum infortuniis et periculis exponere: No one is bound to expose himself to misfortunes and dangers.

Nemo unquam judicet in se: No one can ever be a judge in his own cause.

If a cause come to be tried in which the judge or one of them have ever so little interest, as if one of the parties be a company in which he has one share, he retires from the court, or adjourns the cause, at all events he does not proceed without the consent of the parties.

Nemo unquam vir magnus fuit, sine aliquo divino affiatu (Cic.): No one was ever a great man without some divine inspiration.

Nemo videtur fraudare eos qui sciunt et consentiunt (D. 20, 17, 145):

No one is supposed to defraud those who know and assent.

NEPHEW.—The son of a brother or sister. A nephew, according to the civil law, is in the third degree of consanguinity; but, according to the canon law, in the second.

NEPHEW, (in a will). 1 Abb. (N. Y.) App. Dec. 214; 3 Barb. (N. Y.) Ch. 466; L. R. 2 P. & D. 8.

NEPHEWS, (in a will). 13 Cent. L. J. 5, and cases cited.

NEPHEWS AND NIECES, (in a will). L. R. 6 Ch. 351; 8 *Id.* 928.

NEPHEWS AND NIECES, ALL MY, (in a will). 42 Pa. St. 25.

NEPHEWS AND NIECES OF EVERY DESCRIPTION, (in a will). 2 Yeates (Pa.) 196, 198.

NEPOS.—A grandson.

NEPTIS.—A grand-daughter.

NERVING, (defined). Ry. & M. C. C. 290.
— (renders a horse unsound). Oliph. Hors. 47.

NET BALANCE, (defined). 71 Pa. St. 69.

NET EARNINGS, (defined). 10 Blatchf. (U. S.) 271.

— (how determined). 9 Otto (U. S.) 455.

— (in a contract). 22 Wall. (U. S.) 146.

— (in a statute). 69 Pa. St. 137.

NET INCOME, (in a devise). 5 Me. 199.

NET PRICE.—The lowest price, after deducting all discounts.

NET PROCEEDS, (in an agreement). 1 Rich. (S. C.) Eq. 272.

NET PROFITS.—Clear profits after all deductions.

NET PROFITS, (defined). 12 Allen (Mass.) 334.

— (in articles of copartnership). 105 Mass. 103.

NET RENT, (defined). 3 Car. & P. 96.

NETHER HOUSE OF PARLIAMENT.—The House of Commons was so called in the time of Henry VIII.

NEUTRALITY.—The condition in which a third nation is when it holds aloof from two other nations who are at war with each other. See FOREIGN ENLISTMENT ACT.

NEVER INDEBTED, PLEA OF.—A species of traverse which occurs in actions of debt on simple contract, and is resorted to when the defendant means to deny in point of fact the existence of any

express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied. Steph. Pl. (7 edit.) 153, 156.

NEVER TO PAY, WHICH I PROMISE, (in a promissory note). 2 Atk 31, 32.

NEVER WAS INDEBTED IN MANNER AND FORM, (in a replication). 3 Q. B. 239.

NEVERTHELESS, (in a statute). 1 Str. 516.

NEVICULAR DISEASE, (what is). Oliph. Hors. 91.

NEW AND IMPROVED, (respecting a design). 7 Fed. Rep. 475

NEW ASSETS, (what are not). 117 Mass. 222.

NEW ASSIGNMENT.—Under the common law practice, where the declaration in an action is ambiguous and the defendant pleads facts which are literally an answer to it, but not to the real claim set up by the plaintiff, the plaintiff's course is to reply by way of new assignment, *i. e.* allege that he brought his action not for the cause supposed by the defendant, but for some other cause to which the plea has no application. 3 Steph. Com. 507.

NEW BUILDING, (in a statute). L. R. 9 C. P. 30.

NEW CAUSE OF ACTION, (defined). 68 Me 167.

NEW FOR OLD.—A term in the law of marine insurance in cases of adjustment of partial loss. In making such adjustment, the rule is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one-third *new for old* upon the balance. 3 Kent Com. 339.

NEW GRANTS, (in a statute). 14 Pet. (U. S.) 353.

NEW HISTORY OF A COUNTRY, (what is not). 3 Car. & P. 336.

NEW INN.—An Inn of Chancery. See INNS OF CHANCERY.

NEW INVENTION, (what is). 1 U. S. L. J. 571; Fess. Pat. 45.

— (patent for). 2 H. Bl. 403.

NEW MACHINE, (what is not). 8 Taunt. 375.

NEW MANUFACTURE, (what is). 4 Mun. & G. 580; 2 Marsh. 211.

NEW MATTER, (in the code). 33 Barb. (N. Y.) 627, 629.

NEW NATURA BREVIVM.—See FITZHERBERT.

NEW PARISH, (in a statute). L. R. 8 Q. B. 217.

NEW PROMISE.—A contract made after the original promise has, for some cause, been rendered invalid, by which the promiser agrees to fulfill such original promise.—*Bouvier*.

NEW PROMISE, (insufficient under statute of frauds.). 8 Johns. (N. Y.) 408.

NEW STREET, (in a statute). 6 Ch. D. 539. 1 Ex. D. 223; 4 *Id.* 239; L. R. 6 Q. B. 164; 7 *Id.* 183; L. R. 9 Q. B. 278.

NEW STYLE.—The modern system of computing time was introduced into Great Britain A. D. 1752, the 3d of September of that year being reckoned as the 14th. See **NEW YEAR'S DAY**.

NEW SUCCESSION, (in a statute). L. R. 5 Ex. 263.

NEW TRIAL.—See **TRIAL**.

NEW TRIAL, (defined). 45 Conn. 401.

NEW WRIT.—A new writ for the election of a member of parliament, upon the existing representative vacating his office or dying, is issued from the office of the clerk of the Crown in Chancery under the speaker's warrant and (if the house be sitting) by its own order; but upon a general election, the new writ is issued out of Chancery by advice of the privy council. See *Bushby's Election Manual* (5 edit.) 1880.

NEW YEAR'S DAY.—The 1st of January, and the day on which is commemorated the circumcision of the Saviour as being the eighth from the 25th of December, his supposed day of nativity. The 25th of March was the civil and legal New Year's Day, till the alteration of the style in 1752, when it was permanently fixed at the 1st of January. In Scotland the year was, by a proclamation, which bears date 27th of November, 1599, ordered thenceforth to commence in that kingdom on the 1st of January instead of the 25th of March.—*Encycl. Lond.*

NEWLY DISCOVERED EVIDENCE.—Evidence of some new and material fact or facts which have been ascertained since the verdict was rendered. The discovery of such evidence will often afford a ground for a new trial, provided the new evidence be not merely cumulative, manifestly insufficient to change the result, or intended to be used merely to impeach or discredit a witness.

NEWSPAPER.—

§ 1. A periodical publication containing intelligence of passing events. Newspapers have from

time to time been the subject of enactments for their general regulation. The principal of these in England, were the 60 Geo. III. and 1 Geo. IV. c. 9; 11 Geo. IV. and 1 Will. IV. c. 73; and 6 and 7 Will. IV. c. 76. But these have now been all repealed by the 32 and 33 Vict. c. 24, and 33 and 34 Vict. c. 99.

§ 2. The English Newspaper Libel and Registration Act, 1881, provides for the establishment of a register of proprietors of newspapers, and for annual returns being made by the printers and proprietors of every newspaper, giving particulars of its title and its proprietors. The returns are entered in the register, which is open to public inspection.

§ 3. By the same act, any report published in a newspaper of the proceedings of a public meeting is privileged (*i. e.* not libelous), if the meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice for the public benefit; but this protection is not available as a defense to any proceeding, if the defendant refused to insert in his newspaper a reasonable explanation or contradiction by the plaintiff.

§ 4. No criminal prosecution, for a libel contained in a newspaper can be commenced without the fiat of the director of public prosecutions. (§ 3.) Charges of libels contained in newspapers may be tried summarily. §§ 4, 5.

NEWSPAPER, (defined). 75 Ill. 51, 54; 4 Op. Att. Gen. 10.

— (is necessarily public). 50 Me. 171.

— (in a statute). 25 Minn. 146, 148.

NEXI.—Among the Romans, persons free-born, who, for debt, were delivered bound to their creditors, and obliged to serve them until they could pay their debts.

NEXT, (in a contract). 3 Cal. (N. Y.) 89.
— (in a statute). 1 Mass. 411; 4 Johns. (N. Y.) Ch. 26; 3 Brod. & B. 217, 223; Wilberf. Stat. L. 133.

NEXT ADVOWSON, (grant of). Dyer 35 a.

NEXT AND NEAREST OF KIN, (in a will). 1 Crompt. & M. 598.

NEXT COURT, (in act of 1799). 7 Ga. 107.

NEXT DAY, (in law of notice). 1 Hill (N. Y.) 263.

NEXT DEVISEE, (in a will). South. (N. J.) 709, 710.

NEXT ENSUING, (in an agreement). Cro. Jac. 677, 678.

— (in a bond). Cro. Jac. 646.

— (in a statute). 1 Dyer 376 a.

NEXT ENSUING THE DATE HEREOF, (in a bond). 1 Cro. 420.

NEXT FOLLOWING, (in a bond). Cro. Jac. 646.

NEXT FRIEND.—

§ 1. An infant who desires to bring an action, must, as a rule, do so through the intervention of a person called a "next friend," (or, in some jurisdictions, a "guardian *ad litem*,") generally a relation.

The same rule generally applies where a married woman sues without her husband, or an action requires to be brought by a person of unsound mind who has no committee or has a committee whose interest is adverse to his own. Pope Lun. 298.

§ 2. Every next friend is responsible for the propriety of the proceedings taken in his name. (Dan. Ch. Pr. 67.) According to Coke, the phrase "next friend," as applied to an infant heir in socage, meant next of blood, and this is borne out by the way in which the phrase is used by Littleton. § 123; Co. Litt. 88a. See GUARDIAN AD LITEM.

NEXT FRIEND, (who is not). 1 Serg. & R. (Pa.) 366, 367.

NEXT GENERAL OR QUARTER SESSIONS, (in a statute). 15 East 632.

NEXT HEIR, (in a will). 1 Co. 66; 2 Str. 729.

NEXT MALE HEIR, (in a will). 3 Serg. & R. (Pa.) 451.

NEXT OCTOBER, (in a writ). 1 Root (Conn.) 199.

NEXT OF KIN.—

§ 1. Next in degree of kindred.—In the strict sense of the term, the next of kin of a deceased person are those who are next in degree of kindred to him, *i. e.* are most closely related to him in the same degree. The degrees of kindred are reckoned according to the Roman law, both upwards to the ancestor and downwards to the issue, each generation counting for a degree. Thus, from father to son is one degree, from grandfather to grandson, or *vice versa*, is two degrees, and from brother to brother is two degrees, namely, one upwards to the father and one downwards to the other son; so, from uncle to nephew, or *vice versa*, is three degrees. In tracing the degrees of kindred in the distribution of an intestate's personal estate (*infra*, § 2,) no preference is given to males over females, nor to the paternal over the maternal line, nor to the whole over the half blood, nor do the issue of a deceased person stand in his place, as in the case of descent of real estate. Wms. Pers. Prop. 421. See DESCENT.

§ 2. Under Statutes of Distribution.—More commonly the "next of kin" of a person who has died intestate signifies those persons who are entitled to his personal property, after payment of his debts,

under the Statutes of Distribution. (See DISTRIBUTION.) If the intestate leaves a widow and any child or children or descendant of any child, the English rule is that the widow takes a third and the issue take two-thirds *per stirpes* (*q. v.*), subject to the rule as to advancement (*q. v.*, § 2). If he leaves no widow, his issue take the whole in the same manner. If he leaves a widow but no issue, the widow takes a half, and the other half, or if there is no widow, the whole goes as follows: first to the father, if living; then to the mother, brothers and sisters, or such of them as shall be living, in equal shares, the children of any deceased brother or sister standing in their parent's place, provided the mother or any brother or sister of the deceased is living; and if there is neither mother, brother nor sister living, then to those who are next of kindred to the deceased in the same degree. (*Supra*, § 1.) The husband of a woman dying intestate takes the whole of her personal property. (*Id.* 419.) Some of the State Statutes of Distribution differ from the English one in minor particulars. See the statutes of any State in question.

§ 3. In wills.—When a testator gives his property to the "next of kin" of himself or another, the expression is construed to mean "next of kin" in the strict sense of the word (*supra*, § 1); and, therefore, does not include persons claiming by representation (*e. g.* children of a deceased brother), unless there is an express or implied reference to the Statutes of Distribution. 2 Jarm. Wills (5 Am. edit.) 643. Even then "next of kin" does not include the husband or wife of the deceased. *Id.* 666.

NEXT OF KIN, (defined). 13 N. W. Rep. 401. — (who are). 2 Hill (S. C.) Ch. 416; 12 Mod. 619; 1 P. Wms. 45; 4 Griff. L. R. 1255; Love. Wills 80; Reeve Dom. Rel. 18; Rep. Leg. 115.

— equivalent to "nearest of kin". 2 Myl. & K. 780.

— (when includes widow). 88 N. Y. 493 *et seq.*

— (in a conveyance). 4 Ired. (N. C.) Eq. 50.

— (in articles of marriage settlement). 18 Ves. 49, 56.

— (in a deed of settlement). 28 How (N. Y.) Pr. 417.

— (in a statute). 5 Biss. (U. S.) 166; 1 Black (U. S.) 459; 5 Cal. 63; 3 Day (Conn.)

166; 43 Ill. 338; 4 Abb. (N. Y.) Pr. 312; 13 *Id.* 110; 32 Barb. (N. Y.) 23, 28; 34 *Id.* 410; 15 How. (N. Y.) Pr. 182; 17 Ohio St. 367; 28 *Id.* 192; 4 Desaus. (S. C.) 409 n.

NEXT OF KIN, (in a will). 113 Mass. 430; 11 Metc. (Mass.) 23; 43 Barb. (N. Y.) 147; 63 How. (N. Y.) Pr. 360, 361; 67 N. Y. 387; 69 *Id.* 36; 72 *Id.* 312; 5 Ired. (N. C.) L. 382; 63 N. C. 242; 3 East 278, 290; Forrester 251 n; 3 L. J. Ch. n. s. 17; 4 *Id.* 200; L. R. 3 Ch. 505; L. R. 5 Eq. 303; 9 *Id.* 622; 4 Ves. 649; 14 *Id.* 372; 15 *Id.* 536; 4 Com. Dig. 154; 8 *Id.* 474.

NEXT OF KIN IN EQUAL DEGREE, (in a will). 12 Ves. 433, 8 Com. Dig. 429.

NEXT OF TESTATOR'S NAME, (in a will). Cro. Pliz. 532.

NEXT PERSONAL REPRESENTATIVE, (in a will). L. R. 4 Eq. 359.

NEXT POST, (notice by, in law of bills and notes). 5 Cow. (N. Y.) 307.

NEXT PRESENTATION.—

§ 1. In the law of advowsons, the right of next presentation is the right to present to the first vacancy of a benefice. When an advowson is sold during an existing incumbency, the right of next presentation passes to the grantee, unless the owner reserves it or has already sold it to some one else, as he may do. But when a vacancy has actually occurred, the right of presenting to it is considered to be of such a personal nature that it cannot be sold; if, therefore, the owner sells the advowson at such a time, the next presentation will not pass to the grantee; and if the owner of the advowson dies intestate during a vacancy, the next presentation goes to his executor, while the advowson goes to his heir.

§ 2. A next presentation, when granted separately from the advowson, is personal estate. Wms. Real Prop. 346; 2 Steph. Com. 717. See SIMONY.

NEXT REGULAR SESSION, (in constitution). 61 Ill. 256.

NEXT RELATIONS, (in a will). 1 Cox Ch. 236.

NEXT SESSIONS, (in a warrant). 8 T. R. 110. ——— (in a statute). 1 Doug. 192; 15 East 200, 201.

NEXT SUCCEEDING COURT, (in a statute). 4 Hen. & M. (Va.) 217.

NEXT SURVIVING SON, (in a will). L. R. 3 Eq. 487.

NEXT TERM, (in a statute). 1 Morr. (Iowa) 97; 9 Cush. (Mass.) 403; 5 Mass. 435, 437, 490; 4 Yates (Pa.) 512.

NEXUM.—In Roman law, this word expressed the tie or obligation involved in the old conveyance by *mancipatio*; and came latterly to be used interchangeably with (but less frequently than) the word *obligatio* itself. —Brown.

NICOLE.—An ancient name for Lincoln. —Cowell.

NIDERLING, NIDERING, or NITH-ING.—A vile, base person, or sluggard; chicken-hearted. —Spel. Gloss.

NIECE.—The daughter of a brother or sister. See NEPHEW, as to the degree of consanguinity.

NIECE, (in a will). 3 Barb. (N. Y.) Ch. 466. NIECES, (in a will). 13 Cent. L. J. 5, and cases cited.

NIEF.—See NEIFE.

NIENT COMPRISE.—Not contained. An exception taken to a petition, because the thing desired is not contained in the deed or proceeding upon which the petition is founded.

NIENT CULPABLE.—Not guilty. A plea in criminal prosecutions.

NIENT DEDIRE.—NORMAN-FRENCH: "not deny."

In the old common law practice, when a suggestion (*g. r.*) was entered on the record in an action, and the opposite party did not wish to deny it, he made an entry on the record to that effect, which operated as a confession of the truth of the suggestion, and was called a *nient dedire*. Rex v. Inhabitants of Norwich, Str. 177; Barnewall v. Sutherland, 9 Com. B. 380.

NIENT LE FAIT.—Not his deed. See NON EST FACTUM.

NIGER LIBER.—The black book or register in the Exchequer; chartularies of abbeys, cathedrals, &c.

NIGHT.—As to what, by the common law, is reckoned night and what day, it seems to be the general opinion that it there be daylight, or *crepusculum*, enough begun or left to discern a man's face, that is considered day; and night is when it is so dark that the countenance of a man cannot be discerned. (1 Hale P. C. 350.) However, the limit of 9 P. M. to 6 A. M. has been fixed, by statute, in England, as the period of night, in prosecutions for burglary and larceny. 24 and 25 Vict. c. 96, § 1. See DAY.

NIGHT, (in a criminal statute). 1 Chit. Gen. Pr. 401.

NIGHT MAGISTRATE.—A constable of the night; the head of a watch-house.

NIGHT-WALKERS.—Vagrants; pilferers; disturbers of the peace. They may be arrested by the police, and committed to custody till the morning. 2 Hale P. C. 90.

NIHIL.—Nothing. A return made by a sheriff, &c., when the circumstances warrant it. See NULLA BONA.

Nihil aliud potest rex quam quod de jure potest (11 Co. 74): The king can do nothing except what he can by law do.

NIHIL CAPIAT PER BREVE.—That he take nothing by his writ. Where an issue, arising upon a declaration or peremptory plea, is decided for the defendant, the judgment is, generally, that the plaintiff take nothing, &c., and that the defendant go thereof without day, &c., which is a judgment of *nihil capiat*, &c.

Nihil consensui tam contrarium est quam vis atque metus (D. 50, 17, 116): Nothing is so opposed to consent as force and fear.

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet (Co. Litt. 188): Nothing of a matter accrues to him who, when the right accrues, has nothing in that matter.

Nihil dictum quod non dictum prius (Hurd. 464): Nothing is said which was not said before. Said of a case where former arguments were repeated.

Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo confiatum est (Shep. Touch. 323): Nothing is more consonant to reason, than that a thing should be dissolved or discharged in the same way in which it was created.

Nihil facit error nominis cum de corpore constat (11 Co. 21): An error as to a name is nothing when there is certainty as to the person.

Nihil habet forum ex scena (Bacon): The court has nothing to do with what is not before it.

NIHIL HABUIT IN TENEMENTIS.—A plea pleaded in an action of debt only, brought by a lessor against lessee for years, or at will, without deed. If both lessee and lessor executed a lease, the former was estopped from pleading this plea to an action of debt for rent by the lessor. It has, however, been held to be a good plea on a demise by deed poll, because as to the lessee, it is no estoppel. It could be pleaded by a lessee in any case where occupation was enjoyed, for a tenant cannot impeach his landlord's title. In debt on bond conditioned for the payment of rent reserved upon a demise according to certain articles, the defendant is estopped from saying that he had not anything in the land demised by the articles. In debt for rent by husband and wife, upon a lease by her and her first husband, it is a good defense that her husband was solely seised, and that she had nothing in the land. In assumpsit, for use and occupation, this is a bad defense. It is also no defense in bar of an avowry under 11 Geo. II. c. 19. Woodf. Land. & T. (10 edit.) 677.

Nihil in lege intolerabilius est eandem rem diverso jure censi (4 Co. 93a): Nothing is more intolerable in law than that the same thing should be judged by a different rule.

Nihil magis justum est quam quod necessarium est (Dav. 12): Nothing is more just than what is necessary.

Nihil nequam est præsumentum (2 P. Wms. 583): Nothing wicked is to be presumed.

Nihil perfectum est dum aliquid restat agendum (9 Co. 9b): Nothing is perfect while something remains to be done.

Nihil peti potest ante id tempus quo per rerum naturam persolvi possit (D. 50, 17, 186): Nothing can be demanded before the time when, by the nature of things, it can be paid.

Nihil possumus contra veritatem (Doct. & S. dial. 2, c. 6): We can do nothing against truth.

Nihil præscribitur nisi quod possidetur (Lord Hale, "De jure maris" 32): Nothing is prescribed except what is possessed.

Nihil quod est contra rationem est licitum (Co. Litt. 97): Nothing is permitted which is contrary to reason.

Nihil quod est inconveniens est licitum (Co. Litt. 66a): Nothing that is inconvenient is allowed.

In other words, the law will sooner suffer a private mischief than a public inconvenience.

Nihil simul inventum est et perfectum (Co. Litt. 230): Nothing is invented and perfected at the same moment.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est (2 Inst. 359): Nothing is so consonant to natural equity as that a thing should be dissolved by the same means by which it was bound.

Nihil tam conveniens est naturali æquitati quam voluntatem domini rem suam in alium transferre ratam habere (1 Co. 100): Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.

Nihil tam naturale est, quam eo genere quicquid dissolvere, quo colligatum est; ideo verborum obligatio verbis tollitur, nudi consensus obligatio contrario consensu dissolvitur (D. 50, 17, 35): Nothing is so natural as to dissolve anything in the way in which it was bound together; therefore the obligation of words is taken away by words, the obligation of mere consent is dissolved by the contrary consent.

Nihil tam proprium est imperii quam legibus vivere (2 Inst. 63): Nothing is so much the property of sovereignty as to live according to the laws.

NIHILS, or **NICHILS**.—Issues which a sheriff, apposed in the Exchequer, said were nothing worth and illeivable, for the insufficiency of the parties from whom due. Sheriffs' accounts are now passed by the commissioners for auditing the public accounts. 3 and 4 Will. IV. c. 99.

NIL consensui tam contrarium est quam vis atque metus (D. 50, 17, 116): Nothing is so opposed to consent as force and fear.

NIL DEBET.—He owes nothing. The old form of the general issue in all actions of debt not founded on a specialty. This plea was not allowed in England after Reg. Gen. T. T., 1853, r. 11.

NIL DICIT, JUDGMENT BY.—*See* JUDGMENT, § 7.

Nil facit error nominis cum de corpore vel persona constat (11 Co. 21): A mistake in the name does not matter when the body or person is manifest. *See* 11 Com. B. 406.

Nimia subtilitas in jure reprobatur (Wing. Max. 26): Too much subtlety in law is blamed.

Nimium altercando veritas amittitur (Ilob. 344): By too much altercation truth is lost.

NIMMER.—A thief; a pilferer.

NISI.—A decree, order, rule, declaration, or other adjudication of a court is said to be made *nisi* when it is not to take effect *unless* the person affected by it fails to show cause against it within a certain time, *i. e.* unless he appears before the court, and gives some reason why it should not take effect. *See* ABSOLUTE; DECREE, § 3; RULE.

NISI PRIUS.—

§ 1. In the practice of the English High Court, a trial at *Nisi Prius* is where an action is tried by a jury before a single judge, either at the sittings held for that purpose in London and Middlesex, or at the assizes (*q. v.* § 2). Formerly, all common law actions were tried at bar, *i. e.* before the full court, consisting of several judges; and, therefore, the writ for summoning the jury commanded the sheriff to bring the jurors from the county where the cause of action arose to the Court at Westminster. But when the Stat. 18 Edw. I. directed the justices of assize to try issues in the county where they arose,

the sheriff was thenceforth commanded to bring the jurors to Westminster on a certain day, "unless before that day" (*Nisi Prius*) the justices of assize came into the county. (Sm. Ac. (11 edit.) 134. *See* BANC; TRIAL.) In American law, a trial at *Nisi Prius* means simply a trial of an issue of fact in a civil action before a judge and jury.

§ 2. A Chancery action which is to be tried by a jury, in England, must be tried at *Nisi Prius*, and not before a judge sitting in the Chancery Division. *Warner v Murdoch*, 4 Ch. D. 750. *See West v. White, Id.* 681; *Wood and Ivery v. Hamblet*, 6 Ch. D. 113. *See* FEIGNED ISSUE.

NISI PRIUS RECORD.—An instrument in the nature of a commission to the judges at *Nisi Prius* for the trial of a cause, written on parchment and delivered to the officer of the court in which the cause was to be tried. Any variance between the record and the issue should have been objected to at the time of trial, but the judges had power to amend variances. 9 Geo. IV. c. 15; 3 and 4 Wm. IV. c. 42, § 23; C. L. P. Act, 1852, § 222; and 1 Chit. Arch. 1^r. (12 edit.) 361.

NIVICOLLINI BRITONES.—Welshmen, because they live near high mountains covered with snow.—*Du Cange*.

NO AWARD.—The name of a plea to an action or award. (2 Ala. 520; 1 N. Chip. (Vt.) 131; 3 Johns. (N. Y.) 367.)—*Bouvier*.

NOBILE OFFICIUM.—The equitable jurisdiction of the Court of Session in Scotland.

Nobiles magis plectuntur pecunia; plebes vero in corpore (3 Inst. 220): The higher classes are more punished in money; but the lower in person.

Nobiles sunt, qui arma gentilitia antecessorum suorum proferre possunt (2 Inst. 595): The gentry are those who are able to produce armorial bearings derived by descent from their own ancestors.

Nobiliiores et benigniores præsumptiones in dubiis sunt præferendæ (Reg. Jur. Civ.): In cases of doubt, the more generous and more benign presumptions are to be preferred.

Nobilitas est duplex, superior et inferior (2 Inst. 583): There are two sorts of nobility, the higher and the lower.

NOBILITY.—A division of the English people, comprehending dukes, marquesses, earls, viscounts and barons. These had, anciently,

duties annexed to their respective honors; they are created either by writ, *i. e.* by royal summons to attend the house of peers, or by letters-patent, *i. e.* by royal grant of any dignity and degree of peerage; and they enjoy many privileges, exclusive of their senatorial capacity. 1 Bl. Com. 396.

NOCENT.—Guilty; criminal.

NOCTANTER.—By night. An abolished writ which issued out of Chancery, and returned to the Queen's Bench, for the prostration of inclosures, &c. 7 and 8 Geo. IV. c. 27.

NOCTES and NOCTEM DE FIRMA.—Entertainment of meat and drink for so many nights.—*Domesd.*

NOCUMENTUM.—In old English law, a nuisance.

NODFYRS, or NEDFRI.—Necessary fire.

NOL. PROS., (defined). 12 Allen (Mass.) 218.

NOLENS VOLENS.—Whether willing or unwilling.

NOLLE PROSEQUI.—

§ 1. In civil practice.—An acknowledgment or undertaking entered on record by the plaintiff in an action, to forbear to proceed in the action, either wholly or partially. It has been superseded in most cases by the modern practice of discontinuance (*q. v.*) but it seems to be still applicable in some cases. Arch. Pr. 1201.

§ 2. In criminal prosecutions by indictment or information, a *nolle prosequi* to stay proceedings may be entered, in England, by leave of the attorney-general at any time before judgment. (Arch. Cr. Pl. 109.) In some States the leave of the court must first be obtained, but generally the prosecuting officer may enter a *nol. pros.* at his discretion, at any time before the jury is impaneled, and afterwards by the consent of the defendant.

NOLLE PROSEQUI, (effect of). 2 Mass. 172; 7 Pick. (Mass.) 179; 0 Wheel. Am. C. L. 33.
NOLO CONTENDERE, (effect of plea of). 9 Pick. (Mass.) 206; 6 Wheel. Am. C. L. 30.

NOMEN.—A name. See **AGNOMEN**; **COGNOMEN**.

NOMEN COLLECTIVUM.—A singular noun of multitude; a name for a class of persons or things.

NOMEN GENERALISSIMUM.—A most universal term, as land.

NOMEN JURIS.—A name of law; a legal name or designation; a technical term.

Nomina si nescis perit cognitio rerum; et nomina si perdas, certe distinctio rerum perditur (Co. Litt. 86): If you know not the names of things, the knowledge of things themselves perishes; and if you lose the names, the distinction of the things is certainly lost.

Nomina sunt mutabilia, res autem immobiles (6 Co. 66): Names are mutables, but things immutable.

Nomina sunt notæ rerum (11 Co. 20): Names are the notes of things.

Nomina sunt symbola rerum (Godb.): Names are the symbols of things.

NOMINA TRANSCRIPTITIA.—In the Roman law, obligations contracted by *litteræ* (*i. e.* *litteris obligationes*) were so called because they arose from a peculiar transfer (*transcriptio*) from the creditor's day-book (*adversaria*) into his ledger (*codex*). See **LITTERIS OBLIGATIO**.

NOMINA VILLARUM.—An account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs (9 Edw. II.) and returned by them into the Exchequer, where it is still preserved.

NOMINAL DAMAGES.—See **DAMAGES**, § 3.

NOMINAL DEFENDANT.—Otherwise called a merely formal defendant, is a person whom the exigencies of legal procedure oblige the litigant to make a party to his action or other legal proceeding, but as against whom no relief whatsoever is claimed in the action, or at all events no immediate relief. Such a defendant usually incurs no costs or only the smallest possible costs, and he is entitled to be paid by the plaintiff all costs necessarily incurred by him in the action from having been made a party thereto.—*Brown*.

NOMINAL PARTNER.—One who has not any actual interest in the trade or business, or its profits; but, by allowing his name to be used holds himself out to the world as apparently having an interest.

"If a person will lend his name as a partner," said Lord Chief Justice Eyre, (*Waugh v. Carver*, 2 H. Bl. 285.) "he becomes, as against all the rest of the world, a partner, not upon the grounds of the real transaction between them, but upon

principles of general policy, to prevent the frauds to which others would be liable, if they were to suppose they lent their money upon the apparent credit of three or four persons, when in fact they lent it only to two of them, to whom, without the others, they would have lent nothing."

However, to render a person responsible as a nominal partner, positive consent, or at least a knowledge by him of the assumption of his name, from which his acquiescence will be inferred, must be shown. *See* 2 Steph. Com. (7 edit.) 102. *See* PARTNERSHIP.

NOMINAL PARTY, (who is not). 59 Me. 505.

NOMINAL PLAINTIFF, (assent of, to bring suit). 15 Wend. (N. Y.) 640.

NOMINATE CONTRACTS.—In the civil law, those contracts distinguished by particular names.

NOMINATIM.—By name; expressed one by one.

NOMINATING AND REDUCING.

—A mode of obtaining a panel of special jurors in England, from which to select the jury to try a particular action. The proceeding takes place before the under-sheriff or secondary, and in the presence of the parties' solicitors. Numbers denoting the persons on the sheriff's list are put into a box and drawn until forty-eight unchallenged persons have been nominated. Each party strikes off twelve, and the remaining twenty-four are returned as the panel (*q. v.*) This practice is now only employed by order of the court or judge. Sm. Ac. 130; Juries Act, 1870, § 17.

NOMINATION.

§ 1. **Friendly societies**.—A member of a friendly society in England, or an industrial or provident society, may by writing under his hand, delivered at or sent to the registered office of the society, nominate any person to whom his share or interest in the society is to belong at his death. Such a nomination may be revoked or varied by the nominator, and must not dispose of a share or interest exceeding £50. (Friendly Soc. Act, 1875, § 15, § 3; *Id.*, 1876, § 10; Industrial and P. Soc. Act, 1876, § 11, § 5.) It is in the nature of a testamentary disposition, and seems to be allowed in this form because members of the working classes do not generally leave wills. (Compare the subsections following those above cited.)

§ 2. **Benefice**.—In ecclesiastical law, the owner of an advowson may grant the right of nomination to another, and then the grantor is bound to present for institution any clerk whom the grantee shall name. Phillim. Ecc. L. 348. *See* PRESENTATION.

NOMINATIVUS PENDENS.—A nominative case grammatically unconnected with the

rest of the sentence in which it stands. The opening words in the ordinary form of a deed *inter partes* (This indenture, &c., down to whereas,) though an intelligible and convenient part of the deed, are of this kind.

NOMINE PCENZÆ.—A penalty incurred for not paying rent, &c., at the day appointed in the lease or agreement for payment thereof.

Strictly no forfeiture is *nomine pœnzæ*, unless for non-payment of rent; but it is usual, in English leases, to mention stipulated penalties for non-payment of a collateral sum, ploughing up ancient meadows, or above a certain number of acres in one year, for changing the character of particular premises, &c., by the general name of *nomine pœnzæ*.

Where a penalty is annexed to the non-payment of rent, and distress given for it, a demand must be made, and the penalty is waived by acceptance of rent. Cowp. 247.

NOMINEE.—One named or proposed for an office, either appointive or elective.

NOMOCANON.—(1) A collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photinus, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180. (2) A collection of the ancient canons of the apostles, councils and fathers, without any regard to imperial constitutions. Such is the nomocanon by M. Cotellier. —*Encycl. Lond.*

NOMOGRAPHER.—One who writes on the subject of laws.

NOMOGRAPHY.—A treatise or description of laws.

NOMOTHETA.—A law giver, or law commissioner.

NOMOTHETICAL.—Legislative.

NON.—Not; no. The Latin negative particle commencing many maxims and phrases, such as—

NON ACCEPIT.—He did not accept. This was a plea which put in issue the fact of a bill of exchange being due at the time of action brought, being a denial of a defendant having accepted such a bill as was described in the declaration. *Hinton v. Duff*, 10 W. R. 295.

Non accipi debent verba in demonstrationem falsam quæ competunt in limitationem veram (Bacon): Words which agree in a true meaning ought not to be received in a false sense.

NON ACCIPI DEBENT VERBA IN DEMONSTRATIONEM FALSAM QUÆ COMPETUNT IN LIMITATIONEM VERAM, (applied). 13 Vr. (N. J.) 588.

Non alio modo puniatur aliquis quam secundum quod se habet con-

demnatio (3 Inst. 217): A person may not be punished differently than according to what the sentence enjoins.

Non aliter a significatione verborum recedi oportet quam cum manifestum est aliud sensisse testatorem (2 De G. M. & G. 313): It behooves us not to depart from the literal meaning of words, unless it is evident that the testator intended some other meaning.

NON-ARRIVAL, (in a charter-party). 2 Barn. & C. 564.

NON ASSUMPSIT.—In the action of assumpsit (*q. v.*) the name for the plea by which the defendant avers that "he did not promise" as alleged, and thus raises the general issue. See **GENERAL ISSUE**.

NON ASSUMPSIT INFRA SEX ANNOS.—He did not promise within six years. The form of pleading the Statute of Limitations.

Non auditur perire volens: He who is desirous to perish is not heard. See **BEST EV.** 423, § 385.

NON-BAILABLE.—Not admitting of bail; not requiring bail. See **BAILABLE**.

NON BIS IN IDEM.—Not twice tried for the same offense.

NON CEPIT.—He took not. A plea by way of traverse, which occurs in the action of replevin. It applies to the case where the defendant has not, in fact, taken the cattle or goods, or where he did not take them or have them in the place mentioned in the declaration, the place being a material point in this action.

NON COMPOS MENTIS.—Not sound in mind. This is properly a generic term, in which are included four species: "(1) *Idiota* [an idiot], which from his native, by a perpetual infirmity, is *non compos mentis*; (2) hee that by sickness, griefe, or other accident, wholly loseth his memory and understanding; (3) a lunaticque that hath sometime his understanding and sometime not, *aliquando gaudet lucidis intervallis*, and, therefore, he is called '*non compos mentis*' so long as he hath not understanding; (4) lastly, hee that by his owne vitious act for a time depriveth himselfe of his memory and understanding, as he that is drunken. But that kind

of *non compos mentis* shall give no privilege or benefit to him or to his heires." Co. Litt. 247a; 4 Co. 124b; Pope Lun. 18. See **DRUNKENNESS**; **INSANITY**; **LUNACY**.

NON COMPOS MENTIS, (defined). 4 Cow. (N. Y.) 207; 3 Den. (N. Y.) 37, 41; 12 Ves. 450
 — (who is). 2 Johns. (N. Y.) Ch. 233; 3 Add. 79, 204; 3 Atk. 173.
 — (who is not). 8 Mod. 59, 60.
 — (synonymous with "unsound mind"). 16 Barb. (N. Y.) 259.

Non concedantur citationes priusquam exprimat super qua re fieri debet citatio (12 Co. 47): Summonses should not be granted before it is expressed on what matter the summons ought to be made.

NON CONCESSIT.—He did not grant. A plea resorted to by a stranger to a deed, because estoppels do not hold with respect to strangers. This plea brings into issue the title of the grantor as well as the operation of the deed.

Non consentit qui errat (Bract. 41): He who mistakes does not consent.

NON CONSTAT.—It is not clear; it does not follow.

NON CULPABILIS.—Sometimes abbreviated *non cul.* Not guilty.

NON DAMNIFICATUS.—Not injured. This is a plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified, &c." It is in the nature of a plea of performance; being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition. Steph. Pl. (7 edit.) 300-1.

Non dat qui non habet (Lofft 258): He who has not does not give.

Non debeo melioris conditionis esso quam auctor meus a quo jus in me transit (D. 50, 17, 175, § 1): I ought not to be in a better condition than my author from whom the right passes to me.

Non debet actori licere quod reo non permittitur (D. 50, 17, 41): A plaintiff ought not to be allowed what is not permitted to a defendant.

Non debet adduci exceptio ejus rei cuius petitur dissolutio (Jenk. Cont. 37): An exception of the thing whose abolition is sought ought not to be adduced.

Non debet alteri per alterum iniqua conditio inferri (D. 50, 17, 74): An unjust condition ought not to be imposed upon one by another.

Non debet cui plus licet, quod minus est non licere (D. 50, 17, 21): A man having a power may do less than such power enables him to do.

Non debet dici tendere in præjudicium ecclesiasticæ libertatis quod pro rege et republica necessarium videtur (2 Inst. 625): That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.

NON DECIMANDO.—See **DE NON DECIMANDO**.

Non decipitur qui scit se decipi (5 Co. 60): He is not deceived who knows himself to be deceived.

Non definitur in jure quid sit conatus (6 Co. 41): What an attempt is, is not defined in law.

But see *Russ. Cr. & M.* (4 edit.) 83 *et seq.*

NON DETINET.—A plea by way of traverse, which occurs in the action of detainue. This plea alleges that the defendant did not detain "the said goods in the said declaration specified, &c." It operates accordingly as a denial of the detention of the goods. But under this plea the defendant cannot deny that they are the plaintiff's. *Steph. Pl.* (7 edit.) 154, 163.

NON DIMISIT.—He demised not. (1) A plea resorted to where a plaintiff declares upon a demise without stating the indenture in an action of debt for rent; (2) a plea in bar, in replevin, to an avowry for arrears of rent, that the avowant did not demise.

NON-DIRECTION.—Omission on the part of a judge to enforce a necessary point of law upon a jury.

NON DISTRINGENDO.—A writ not to distrain.

Non effecit effectus, nisi sequatur effectus, sed in atrocioribus delictis punitur effectus, licet non sequatur effectus (2 Rol. Rep. 89): The intention fulfills nothing unless an effect follow. But in the deeper delinquencies, the intention is punished, although an effect follow not.

Non est arotius vinculum inter homines quam juramentum (Jenk.

Cent. 126): There is no tighter bond among mankind than an oath.

Non est consonum rationi, quod cognitio accessorii in curia christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere (12 Co. 65): It is unreasonable that the cognizance of an accessory matter should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.

Non est disputandum contra principia negantem (Co. Litt. 343): We cannot dispute against a man who denies first principles.

NON EST FACTUM.—A plea by way of traverse, which occurs in debt on bond or other specialty, and also in covenant. It denies that the deed mentioned in the declaration is the defendant's deed; under this, the defendant may contend at the trial that the deed was never executed in point of fact; but he cannot deny its validity in point of law.

NON EST INVENTUS.—The name of the return made by a sheriff or other officer to a writ directing him to arrest a person, when he is unable to find him. See **ATTACHMENT**; **CAPIAS AD SATISFACIENDUM**; **RETURN**.

Non est novum ut priores leges ad posteriores trahantur (D. 1, 3, 36): It is no new thing that prior statutes should give place to later ones.

Non est regula quin fallat: There is no rule which may not fail.

Non ex opinionibus singulorum sed ex communi usu nomina exaudiri debent (D. 33, 10, 7, 3): Names ought to be regarded not by the opinions of individuals, but by the common use.

Non facias malum, ut inde veniat bonum (11 Co. 74): You are not to do evil that thence good may arise.

NON FECIT.—He did not make it. A plea in an action of assumpsit on a promissory note. 3 *Man. & G.* 446.

NON FECIT VASTUM CONTRA PROHIBITIONEM.—He did not commit waste against the prohibition. A plea to an action founded on a writ of estrepement for waste. 3 *Bl. Com.* 226, 227.

NON-FORFEITING LIFE POLICY, (indorsed on a policy of insurance). 67 *Me.* 86.

Non hæc in fœdera veni: I did not agree to these terms.

Non impedit clausula derogatoria quo minus ad eadem potestate res dissolvantur a qua constituuntur (Bacon): A derogatory clause does not impede things from being dissolved by the same power by which they are created.

NON IMPEDIVIT.—He did not disturb or hinder. The plea of the general issue in the action of *quare impedit*.

NON IMPLACITANDO ALIQUEM DE LIBERO TENEMENTO SINE BREVI.—A writ to prohibit bailiffs, &c., from distraining or impleading any man touching his freehold without the king's writ.—*Reg. Orig.* 171.

Non in legendo sed in intelligendo leges consistunt (8 Co. 167): The laws consist not in being read, but in being understood.

NON INFREGIT CONVENTIONEM.—A plea which raised a substantial issue in an action for non-repair according to covenant, whether there was a want of repairs or not.

NON INTROMITTANT CLAUSE.—A clause exempting a smaller jurisdiction from being included in a larger.

NON INTROMITTENDO, QUANDO BREVE PRÆCIPE IN CAPITE SUBDOLE IMPETRATUR.—A writ addressed to the justices of the bench, or in eyre, commanding them not to give one who, under color of entitling the king to land, &c., as holding of him *in capite*, had deceitfully obtained the writ called *præcipe in capite*, any benefit thereof, but to put him to his writ of right.—*Reg. Orig.* 4.

NON JURIDICUS.—Not juridical. See *DIES NON*.

NON JURIDICUS, DIES, (defined). 74 N. C. 187, 193.

Non jus sed seisinam facit stipitem (Fleta l. vi.): Not right, but seisin, makes a stock.

Non licet quod dispendio licet (Co. Litt. 127): That which is permitted at a loss is not permitted.

NON LIQUET—It does not appear clear. A verdict given by a jury, when a matter was to be deferred to another day of trial.

The same phrase was used by the Romans; after hearing a cause, such of the judges as thought it not sufficiently clear to pronounce upon, cast a ballot into the urn with the two letters N. L., for *non liquet*.

NON MERCHANTIZANDA VICTUALIA.—An ancient writ addressed to jus-

tices of assize, to inquire whether the magistrates of a town sold victuals in gross or by retail, during the time of their being in office, which was contrary to an obsolete statute; and to punish them if they did.—*Reg. Orig.* 184.

NON MOLESTANDO.—A writ that lay for a person who was molested contrary to the king's protection granted to him.—*Reg. Orig.* 184.

Non observata forma infertur annullatio actus: When form is not observed, a failure of the action ensues.

NON OBSTANTE.—Notwithstanding. A license from the crown to do that which could not be lawfully done without it. Also, a clause frequent in statutes and letters-patent, importing a license from the crown to do a thing, which by common law might be done, but being restrained by act of parliament could not be done without such license. Plowd. 501; 2 Reeves c. viii. 83.

But the doctrine of *non obstante*, which sets the prerogative above the laws, was effectually demolished by the Bill of Rights at the Revolution; for it is enacted by 1 W. & M. st. 2, c. 2, that no dispensation, by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of none effect, except a dispensation be allowed in such statute.

NON OBSTANTE VEREDICTO.—Notwithstanding the verdict. A judgment *non obstante veredicto*, is a judgment entered, by order of the court, for the plaintiff in an action at law, notwithstanding a verdict in favor of the defendant. It is always upon the merits, and never granted but in a very clear case, as where it is apparent to the court from the defendant's own plea that he can have no merits. (2 Tidd Pr. 922.)—*Burrill*.

NON OMITTAS.—A clause usually inserted in writs of execution, in England, directing the sheriff "not to omit" to execute the writ by reason of any liberty, because there are many liberties or districts in which the sheriff has no power to execute process unless he has special authority. 2 Steph. Com. 630.

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest (D. 1, 3, 20): A reason cannot be given for all the laws which have been established by our ancestors.

Non pertinet ad judicem secularem cognoscere de iis quæ sunt mere spiritualia annexa (2 Inst. 488): It belongs not to the secular judge to take cognizance of things which are merely spiritual.

NON PLEVIN.—Default in not replevy-ing land in due time. See 9 Edw. III. c. 2.

NON PONENDIS IN ASSISIS ET JURATIS.—A writ formerly granted for freeing and discharging persons from serving on assizes and juries.—*F. N. B.* 165.

Non possessori incumbit necessitas probandi possessiones ad se pertinere (Broom Max. (5 edit.) 714): A person in possession is not bound to prove that the possessions belong to him.

Non potest adduci exceptio ejus rei cujus petitur dissolutio (Bac. Max. 22): An exception of the same thing whose avoidance is sought, cannot be made.

Where the legality of some proceeding is the subject in dispute between two parties, he who maintains its legality, and seeks to take advantage of it, cannot rely upon the proceeding itself as a bar to the adverse party; for otherwise the person aggrieved would be clearly without redress.

Non potest probari quod probatum non relevat (1 Exch. 91, 92): That cannot be proved, which, if proved, is immaterial.

Non potest rex gratiam facere cum injuria et damno aliorum (3 Inst. 236): The king cannot confer a favor on one subject which occasions injury and loss to others.

Non potest videri aessisse habere qui nunquam habuit (D. 50, 17, 208): One who never did possess cannot be considered to have ceased to possess.

NON PROCEDENDO AD ASSIS-AM.—See *DE PROCEDENDO*, &c.

NON PROS.—Abbreviation for *non prosequitur*. If in the proceedings of an action at law the plaintiff neglected to take any of those steps which he ought to take within the time prescribed by the practice of the courts for that purpose, the defendant might enter judgment of *non pros.* against him, whereby it was adjudged that the plaintiff did not follow up (*non prosequitur*) his suit as he ought to do, and, therefore, the defendant ought to have judgment against him. (Sm. Ac. 96.) And in such a case, the defendant would, under the present practice in England and most of the States, move to dismiss the plaintiff's action for want of prosecution.

Non quod dictum est, sed quod factum est, inspicitur (Co. Litt. 36a): Regard is to be had, not to what is said, but to what is done.

The words of the parties are not conclusive of their intention, where these words are at variance with their actual conduct, *e. g.* it may be expressed that some specified sum is "liquidated damages," and yet the specified sum may be in fact only the outside limit of uncertain and unliquidated damages, when the nature of the contract or bond is regarded. *Kemble v. Farren*, 6 Bing. 141.

Non refert an quis assensum suum præfert verbis, aut rebus ipsis et factis (10 Co. 52): It matters not whether a man gives his assent by his words or by his acts and deeds.

Non refert quid ex æquipollentibus fiat (5 Co. 122): It matters not which of [two] equivalents happen.

Non refert quid notum sit judici, si notum non sit in forma judicii (3 Buls. 115): It matters not what is known to the judge, if it be not known in a judicial form.

Non refert verbis an factis fit revocatio (Cro. Car. 49): It matters not whether a revocation is made by words or deeds.

NON-RESIDENT, (who is). 5 Barn. & Ald. 908; 4 Moo. 356; 10 *Id.* 522.

—— (who is not). 7 Moo. 613.

—— (in tax law). 4 La. 11.

NON-RESIDENTS, (in a statute). 3 J. J. Marsh. (Ky.) 445.

Non respondebit minor; nisi in causa dotis, et hoc pro favore doti (4 Co. 71): A minor shall not answer; unless in a case of dower, and this in favor of dower.

NON-SANE MEMORY, (defined). 2 Sch. & L. 301.

NON SEQUITUR.—It does not follow.

Non solent quæ abundant, vitare scripturas (D. 50, 17, 94): Surplusage is not wont to vitiate writings.

NON SOLVENDO PECUNIAM AD QUAM CLERICUS MULCTATUR PRO NON-RESIDENTIA.—A writ prohibiting an ordinary to take a pecuniary mulct imposed on a clerk of the sovereign for non-residence—*Reg. Writ.* 59.

NON SUBMISSIT.—He did not submit. A plea to an action of debt, on a bond to perform an award, to the effect that the defendant did not submit to the arbitration.

NON SUI JURIS.—The opposite of *sui juris* (*q. v.*)

NON SUM INFORMATUS.—A formal answer made of course by an attorney, that he was not informed to say anything material in defense of his client; by which he was deemed to leave it undefended, and so judgment passed against his client.

Non temere credere est nervus sapientiæ (5 Co. 114): Not to believe rashly is the nerve of wisdom.

NON TENENT INSIMUL.—They do not hold together. A plea in partition, by which defendant denies that he holds the property in suit, as a tenant in common with the plaintiff.

NON TENUIT.—A plea in bar to replevin, to avowry for arrears of rent, that the plaintiff does not hold in manner and form, as the avowry alleges.

Non valebit felonis generatio, nec ad hæreditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio suc-

cedit in hæreditate patris vel matris a quo non fuerit feloniam perpetrata (3 Co. 41): The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but if he had offspring before the felony, such offspring may succeed as to the inheritance of the father or mother by whom the felony was not committed.

This is not now the rule, for descendants can trace through a felon ancestor.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit sit in possessione (Co. Litt. 295): Confirmation is not valid unless he who confirms is either in possession of the thing itself, or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.

Non valet exceptio ejusdem rei cujus petitur dissolutio (2 Eden 134): A plea of the same matter the dissolution of which is sought, is not valid.

Non valet impedimentum quod de jure non sortitur effectum (4 Co. 31a): An impediment which does not derive its effect from law, is of no force.

Non verbis, sed ipsis rebus, leges imponimus (Cod. 6, 43, 2): We impose laws, not upon words, but upon things themselves.

Non videntur qui errant consentire (D. 50, 17, 116, § 2): They are not considered to consent who commit a mistake.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit (Bacon): He does not appear to have retained consent, who has changed anything through menaces.

Non videtur perfecte cujusque id esse, quod ex casu auferri potest (D. 50, 17, 139, 1): That does not seem to be completely one's own, which can be taken from him on occasion.

Non videtur quisquam id capere quod ei necesse est alii restitutum (D. 50, 17, 51): No one is considered entitled to recover that which he must give up to another.

Non videtur vim facere, qui jure suo utitur et ordinaria actione expetit (D. 50, 17, 155, 1): He is not deemed to use force, who exercises his own right, and proceeds by ordinary action.

NON VULT ULTERIUS PROSEQUI, (an entry upon a record). Cro. Jac. 211.

NON-ABILITY.—Inability; an exception against a person.—*F. N. B.* 85, 65. *See* DISABILITY.

NON-ACCEPTANCE.—The refusal of acceptance.

NON-ACCESS.—In the law of husband and wife, non-access is the absence of access (*q. v.* § 2). If non-access for above nine months is proved, by showing that the husband and wife were separated from one another, any children conceived and born of the wife during that period are bastards. 2 Steph. Com. 285.

NON-ADMISSION.—The refusal of admission.

NONÆ ET DECIMÆ.—Payments made to the church, by those who were tenants of church-farms. The first was a rent or duty for things belonging to husbandry, the second was claimed in right of the church.

NONAGE.—The period of infancy, *i. e.* the age of a person under twenty-one years. Litt. § 258. *See* AGE.

NONAGIUM, or NON-AGE.—A ninth part of movables which was paid to the clergy on the death of persons in their parish, and claimed on pretense of being distributed to pious uses.—*Blount*.

NON-APPEARANCE.—The omission of timely and proper appearance; a failure of appearance. *See* APPEARANCE.

NON-CLAIM.—

§ 1. At common law, the levying of a fine (*q. v.* § 9) barred the right of all persons, whether parties, privies or strangers, unless they put in their claim within a year and a day. (Litt. § 411; 2 Bl. Com. 354.) This was called being barred by non-claim. Alterations were afterwards made in the time allowed for claiming, (Stat. 34 Edw. III. c. 16; 4 Hen. VII. c. 24,) but the subject is now of no practical importance, fines having been abolished. Stat. 3 and 4 Will. IV. c. 74, § 2.

§ 2. There was also a non-claim in a writ of right. Co. Litt. 262a.

NONCONFORMIST.—One who refuses to comply with others; one who refuses to join in the established forms of worship in England. Nonconformists are of two sorts: (1) Such as absent themselves from divine worship in the established church through total irreligion, and attend the service of no other persuasion; (2) such as attend the religious service of another persuasion. *See* DISSENTERS.

NONES.—Days in the Roman calendar, so called because they reckoned nine days from them to the Ides. The seventh day of March, May, July and October, and the fifth day of all other months.—*Kenn. Antig.* 92.

NON-EXISTING GRANT.—*See* LOST GRANT.

NONFEASANCE.—The neglect or failure of a person to do some act which he ought to do. The term is not generally used to denote a breach of contract, but rather the failure to perform a duty towards the public whereby some individual sustains special damage, as where a sheriff fails to execute a writ. 3 Bl. Com. 165; Broom Com. L. 655; Borough of Bathurst v MacPherson, 4 App. Cas. 256. *See* MALFEASANCE; TORT.

NON-ISSUABLE PLEAS.—Those upon which a decision would not determine the action upon the merits, as a plea in abatement. 1 Chit. Arch. Pr. (12 edit.) 249.

NON-JOINDER is where a person who ought to be made party to an action is omitted. The general rule is that in an action on a contract all the parties to it who are entitled or liable jointly should be joined as plaintiffs and defendants, and that in an action of tort persons who have a joint interest ought to sue jointly for an injury to it; persons who have a separate interest, but sustain a joint injury, may sue either jointly or separately. Joint wrong-doers may be sued either jointly or separately. Dic. Part. 11 and *passim*. *See* JOINT; MISJOINDER.

Non-joinder is cured by making an application to the court to add the necessary parties.

NON-JURING.—To swear. Applied to those who would not swear allegiance to the Hanoverian family.—*Encycl. Lond.*

NONJUROR.—One who (conceiving the Stuart family unjustly deposed) refused to swear allegiance to those who succeeded them.

NON-RESIDENCE.—In ecclesiastical law, non-residence is where a spiritual person holding a benefice does not keep residence on it. It is in ordinary cases an offense, and is punishable by monition and sequestration of the benefice, by forfeiture of part of the income of the benefice, and by the compulsory appointment of a curate. Licenses for non-residence may be

granted by the bishop in certain cases. Phillim. Ecc. L. 1149; Stat. 1 and 2 Vict. c. 106.

NON-RESIDENT.—

§ 1. One who is not a dweller within some jurisdiction in question; not an inhabitant of the State in which some action or proceeding has been or is about to be commenced.

§ 2. As applied to a trading corporation, non-resident signifies that it has no place of business in the jurisdiction. The question is of importance with reference to the liability of such a corporation to be sued in any particular jurisdiction, and to the manner in which it should be served with process. Westman v. Aktiebolaget, &c., 1 Ex. D. 237. *See* DOMICILE, § 3; JURISDICTION.

NON-RESIDENTIO PRO CLERICO REGIS.—A writ, addressed to a bishop, charging him not to molest a clerk employed in the royal service, by reason of his non-residence; in which case he is to be discharged.—*Reg. Orig.* 58.

NON-RESISTANCE.—The extreme votaries of the royal power in the stormiest times of English history, finding the royal commands at variance with their ideas of duty to themselves and the State, invented a compromise (which is expressed by this word) whereby, although they felt bound to offer no active opposition to the royal ordinance, they felt justified, in such a case, in taking a course of passive disobedience, and obeying only in the event of being otherwise compelled to take arms against the royal authority. The word has now only an historical value.

NON-SANE MEMORY.—A person laboring under mental alienation (*q. v.*)

NONSENSE.—Where a matter set forth is grammatically right, but absurd in the sense and unintelligible, some words cannot be rejected to make sense of the rest, but they must be taken as they are; for there is nothing so absurd but what, by rejecting, may be made sense; but where a matter is nonsense, by being contradictory and repugnant to somewhat precedent, there the precedent matter which is sense shall not be defeated by the repugnancy which follows; but that which is contradictory shall be rejected.

NONSUIT.—*NORMAN-FRENCH: nonnis.* "he does not prosecute his action." *See* Co. Litt. 188 b.

Nonsuit is where the plaintiff in an action abandons his case at the trial before

the jury have given their verdict, whereupon judgment of nonsuit is given against him. (*See JUDGMENT*, § 8.) Formerly the advantage of this practice (which was peculiar to the common law courts) was that the plaintiff could bring another action against the defendant for the same cause of action; but under the new English practice any judgment of nonsuit, unless the court otherwise directs, has the same effect as a judgment on the merits, *i. e.* it bars the plaintiff from bringing another action for the same cause, but in case of mistake, surprise or accident, a judgment of nonsuit may be set aside by the court. (*Rules of Court*, xli. 6; *Singer, &c., Co. v. Wilson*, 2 Ch. D. 438.) The prevailing American rule is that a judgment of nonsuit is no bar to a new action.

NONSUIT, (is not a final judgment). 1 Pet. (U. S.) 471.

NON-SUMMONS, WAGER OF LAW OF.—The mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time. 31 Eliz. c. 3, § 2; 2 Saund. 45 c.

NON TENURE.—A plea in bar to a real action, by saying that he (the defendant) held not the land mentioned in the plaintiff's count or declaration, or at least some part thereof. It was either general, where one denied ever to have been tenant of the land in question, or special, where it was alleged he was not tenant on the day whereon the writ was purchased. (1 Mod. 181.) The distinction between real and personal actions has now practically ceased to exist. *See ACTION*, § 15.

NON-TERM.—The time of vacation between term and term.—*Cowell*.

NON-TERMINUS.—The vacation between term and term, formerly called the time or days of the king's peace.

NON-USER is where a person ceases to exercise a right. The term is principally used with reference to easements, *profits à prendre*, and similar rights, which may be extinguished by non-user for a certain number of years, which apparently must not be less than twenty; but the non-user must be of such a nature as to show an intention to abandon the right, as where it amounts to acquiescence in an unlawful interruption. (*Gale Ensm.* 619 *et seq.* *See INTERRUPTION*.) A public office is liable

to forfeiture for non-user or neglect to perform the duties. Co. Litt. 233 a.

NOOK OF LAND.—Twelve acres and a half. Dugd. Warwick 665.

NORMAL.—Opposed to exceptional; that state wherein any body most exactly comports in all its parts with the abstract idea thereof, and is most exactly fitted to perform its proper functions, is entitled "normal."

NORMAN-FRENCH.—The tongue in which several formal proceedings of state are still carried on in England. The language having remained the same since the date of the Conquest, at which it was introduced into England, is very different from the French of this day, retaining all the peculiarities which at that time distinguished every province from the rest. A peculiar mode of pronunciation (considered authentic) is handed down and preserved by the officials, who have, on particular occasions, to speak the tongue. Norman-French was the language of our legal procedure till the 36 Edw. III.

NORROY.—The title of the third of the three kings-at-arms, or provincial heralds. *See HERALD*.

NORTH, (in a deed). 2 Pick. (Mass.) 576; 5 Watts (Pa.) 459.

NORTH AMERICA, UNITED STATES OF, (in a bond). 10 Pet. (U. S.) 365.

NORTH BRITAIN.—Scotland.

NORTHERLY, (equivalent to "due north"). 25 Cal. 296.

— (not synonymous with "north"). 115 Mass. 577; 16 Ill. 117.

— (in a deed). 2 Pick. (Mass.) 576.

— (in a grant). 1 Johns. (N. Y.) 156.

NORTHWARD, (in a grant). 3 Cal. (N. Y.) 293.

NORTHWARDLY, (defined). 21 Barb. (N. Y.) 398, 404.

— (synonymous with "north"). 1 Bibb (Ky.) 53.

Noscitur a sociis: It may be known or explained from its associates.

This refers to the construction of words and clauses in contracts and written instruments. Thus, where there is a string of words in a statute, and the meaning of one of them is doubtful, that meaning is given to it which it shares with the other words. So, if the words "horse, cow, or other animal" occur, "animal" is held to apply to brutes only. *See EQUUS, GENUS*.

NOSCITUR A SOCIIS, (applied). 124 Mass. 18 126 *Id.* 46.

Noscitur ex socio, qui non cognoscitur ex se (Moore 817): He who cannot be known from himself may be known from his associate.

NOSOCOMI.—In the civil law, managers of pauper hospitals.

NOT ACCOUNTABLE FOR DEPRECIATION, (in a will). 9 Ch. D. 95.

NOT EXCEEDING EIGHT DAYS, (equivalent to "within eight days"). 15 Serg. & R. (Pa.) 44.

NOT EXCEEDING EIGHTY ACRES, (in homestead law). 56 Ala. 50.

NOT FOUND.—No true bill. *See* IGNORAMUS.

NOT GUILTY.—

§ 1. **Criminal law.**—The appropriate plea to an indictment where the prisoner wishes to raise the general issue. *See* ISSUE, § 10; *PITIA*.

§ 2. **Civil actions.**—It is also a plea used in common law actions of tort under the old practice, when the defendant simply denies that he has committed the wrong complained of. (*See* GENERAL ISSUE.) Under the present system of pleading, in England and most of the States, a defendant must deal specifically with all allegations made by the plaintiff which he does not admit, and therefore a plea of "not guilty" is no longer, as a general rule, permissible. There are, however, certain statutes which provide (principally for the protection of constables, inspectors, and other public officers,) that in all actions for anything done in pursuance of the act or in execution of the powers and authorities thereof, the defendant may plead "not guilty," which entitles him to give the special matter in evidence at the trial; *i. e.* he may prove the facts of the case and show that he acted in pursuance of the statute, so that such a plea has the same effect as if he had pleaded the facts and his defense specifically. (*See*, for instance, Stat. 5 and 6 Will. IV. c. 76, § 76; *Id.* c. 68, § 39. *See*, also, Stat. 5 and 6 Vict. c. 97, § 8.) This is called pleading "not guilty by statute," and may still be done in England under the new practice, but the defendant cannot plead any other defense without leave (Rules of Court xix. 16); and he must

insert in the margin of the plea the words "by statute," together with the year, chapter, and section of the act or acts on which he relies, and specify whether they are public or private. Reg. Gen. T. T. 1853; 1 El. & B. lxxxii.

NOT POSSESSED.—A plea formerly interposed in an action of trover, alleging that defendant was not possessed, at the time of action brought, of the chattels alleged to have been converted by him.

NOT PROVEN.—A verdict allowed to be given in criminal trials in Scotland.

NOT TO APPEAR, I PROMISE, (in a bond). 2 Rawle (Pa.) 23, 24; 1 Wheel. Am. C. L. 326.

NOT TO BE PAID BY US IN ANY EVENT WITHIN ONE YEAR FROM DATE, (added to indorsement of promissory note). 7 Minn. 74.

NOT TO PAY, (in a bond). 2 Salk. 463.

NOTARIAL.—Taken by a notary.

NOTARY PUBLIC.—A person who attests the execution of any deeds or writings, or makes certified copies of them in order to render the same authentic, especially for use abroad. (*See* LEGALIZATION.) In England, he is appointed to his office by the Archbishop of Canterbury, (Phillim. Ecc. L. 1232; Stats. 41 Geo. III. c. 79, and 6 and 7 Vict. c. 90,) in America, usually by the governor of the State, by and with the advice and consent of the State senate. An important branch of his duties is the protesting of bills of exchange and promissory notes. (*See* PROTEST.) In England, he also makes a record of the proceedings in an ecclesiastical cause. *Id.* 1243.

NOTARY PUBLIC, (defined). 6 Serg. & R. (Pa.) 486.

— (duties of). 2 Hill (N. Y.) 227.

— (history of the office of). 2 Clit. Gen. Pr. 36.

NOTATION.—In English probate practice, notation is the act of making a memorandum of some special circumstance on a probate or letters of administration. Thus, where a grant is made for the whole personal estate of the deceased within the United Kingdom, which can only be done in the case of a person dying domiciled in England, the fact of his having been so domiciled is noted on the grant. Coote Prob. Pr. 36.

NOTE, (in statute of frauds). 2 Johns. (N. Y.) 430; 7 *Id.* 321; 3 Wend. (N. Y.) 459; 5 Barn. & C. 583; 6 *Id.* 437; 9 *Id.* 561; 1 Bing. 9; 1 Bos. & P. N. R. 252; 8 Dowl. & Ry. 843; 6 East 307.

NOTE, ACCOMMODATION, (what is). 7 Serg. & R. (Pa.) 465.

NOTE, DESTROYED, (how declared upon). Ohio (Cond.) 234.

NOTE OF A FINE.—A brief of a fine made by the chirographer before it was engrossed. Abolished by 3 and 4 Will. IV. c. 74.

NOTE OF ALLOWANCE.—This was a note delivered by a master to a party to a cause, who alleged that there was error in law in the record and proceedings allowing him to bring error. (See Com. L. P. Act, 1852, § 149.) Error has now, however, been abolished in England. (Judicature Act, 1875, Ord. LVIII. r. 1.) Proceedings in error in law were deemed a *supersedeas* of execution from the service of the copy of such note, together with the statement of the grounds of error intended to be argued. (Com. L. P. Act, 1852, § 150.) Now, by the Judicature Act, 1875, Ord. LVIII. r. 16, an appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the court appealed from, or any judge thereof, or the court of appeal may so order; and no intermediate act or proceeding shall be invalidated, except so far as the court appealed from may direct.

NOTE OF HAND.—A promissory note.

NOTE OF PROTEST.—A note or memorandum of the protest, made on the bill or note by the notary, at the time of protest, to be filled out at his leisure.

NOTE, PROMISSORY, (what are the essential parts of). 6 Cow. (N. Y.) 108.

— (expressing no time for payment, when payable). 15 Wend. (N. Y.) 308.

NOTED ITS CONTENTS, (in a letter). 4 Mete. (Mass.) 12.

NOTES.—Memoranda made by a judge on a trial, as to the evidence adduced, and the points reserved, &c. A copy of the judge's notes may be obtained from his clerk. See MINUTES.

NOTES, (in New York act, April 9th, 1850, § 2.) 2 Blatchf. (U. S.) 165, 180.

NOTES OF HAND, ALL HIS, (in a bequest). 2 Dev. (N. C.) Eq. 488.

NOTHUS.—A natural child, or a person of spurious birth.

NOTICE.—

§ 1. **Judicial.**—Primarily, "notice" means knowledge or cognizance; and, therefore, when we speak of a court taking judicial notice of a fact, we mean that the court recognizes the fact without evidence to prove it. Thus, the courts notice

the political constitution of our own government, the existence and title of every State and sovereign recognized by our government, the dates of the calendar, &c. Best Ev. 354.

§ 2. To give notice of a fact to a person is to bring it to his knowledge. When the circumstances are such that he is either actually aware of the fact, or might or ought to be aware of it, he is said to have notice of it.

Notice is either actual (express) or constructive.

§ 3. **Express**—Actual or express notice is that given in plain words from one person to another, either verbally or in writing. When a written notice purports on the face of it to be a notice it is called a "formal notice."

§ 4. **Constructive.**—Constructive notice is where knowledge of the fact is presumed from the circumstances of the case. Thus, where a person has actual notice of a charge or incumbrance on certain property, he is held to have constructive notice of facts to a knowledge of which he would have been led by an inquiry into the charge or incumbrance, whether his abstention from inquiry was fraudulent or merely negligent. (Jones v. Smith, 1 Hare 55; 2 White & T. Lead. Cas. 55; Dart Vend. 861.) So notice to an agent, solicitor, &c., is constructive notice to the principal or client, (Le Neve v. Le Neve, Amb. 436; 2 White & T. Lead. Cas. 43; Dart Vend. 858,) on the presumption that the agent did his duty by communicating the notice to his principal; therefore, that presumption may be rebutted if it appears that the agent was a party to a fraud, or otherwise acted in such a way as to raise a presumption that he would not communicate the notice to his principal. Cave v. Cave, 15 Ch. D. 639; Patman v. Harland, 17 Ch. D. 353; Williams v. Williams, Id. 437.

§ 5. The doctrine of notice (formerly an equitable doctrine) is that a person who purchases an estate, although for valuable consideration, after notice of a prior equitable right, makes himself a *malâ fide* purchaser, and will not be enabled, by getting in the legal estate, to defeat that right, but will be held a trustee for the benefit of the

person whose right he sought to defeat. (*Basset v. Nosworthy*, Rep. t. Finch 102; 2 White & T. Lead. Cas. 1.) Thus, if a vendor contract with two different persons for the sale to each of them of the same estate, and if the person with whom the second contract is made acquires notice of the first contract, and then procures a conveyance of the legal estate in pursuance of his own contract, the court will order him to convey the property to the first purchaser. *Potter v. Saunders*, 6 Hare 1. As to the doctrine of notice generally, Mark. El. L. § 487.

§ 6. As to notice of the assignment of a chose in action, *see* CHOSE, § 3. *See, also*, LIS PENDENS; PRIORITY; REGISTRATION; TACKING.

NOTICE, (what is). 7 Cranch (U. S.) 547; 3 Day (Conn.) 353, 492; 3 Hen. & M. (Va.) 144.

—— (what is not). 5 Rawle (Pa.) 51; 5 Serg. & R. (Pa.) 253, 322; 16 *Id.* 160; 2 Watts (Pa.) 75.

—— (when must be in writing). 3 Gr. (N. J.) 178; 19 Barb. (N. Y.) 537, "40; 14 Wend. (N. Y.) 539, 540.

—— (when may be by parol). 5 Hill (N. Y.) 101; 15 Wend. (N. Y.) 427.

—— (equivalent to "information," "intelligence," or "knowledge"). 43 Conn. 54.

—— (of a deed, what is). 8 Pet. (U. S.) 38.

—— (of prior conveyance, what is). 15 Wend. (N. Y.) 588.

—— (of unregistered conveyance, what is). 6 Wend. (N. Y.) 226.

—— (of a lien, effect of on a purchaser). 1 Munf. (Va.) 38.

—— (to a corporation, what is). 1 Hall (N. Y.) 480.

—— (decree when not considered, to purchasers). Tol. Ex. 270.

—— (a clerk by the year, when may be discharged without). 4 Car. & P. 208.

—— (a servant, when entitled to, of dismissal). 3 Esp. 235.

—— (an advertisement in a newspaper, when not considered notice). 2 Camph. 157.

—— (what is sufficient, of the condition of a sale at auction). 3 Esp. 271.

—— (to an agent, when good). 4 Paige (N. Y.) 127, 136; 3 Madd. Ch. 40.

—— (limiting a common carrier's liability). 2 Stark. 279.

—— (what is not within 30 Geo. III. c. 69, § 185). 1 Holt N. P. 27.

—— (when registry is not considered). 1 Sch. & L. 103.

—— (in insurance policy). 1 Gr. (N. J.) 121; 7 Cow. (N. Y.) 645; 9 Wend. (N. Y.) 163.

—— (in a statute). 52 Miss. 645; 32 Mo. 205; 1 Gr. (N. J.) 65; 18 Barb. (N. Y.) 393; 25 *Id.* 635; 53 *Id.* 407; 35 How. (N. Y.) Pr. 193; 3 Johns. (N. Y.) Cas. 108; 14 Wend. (N. Y.) 544.

NOTICE, ACTUAL, (what is). 14 Ga. 145.

NOTICE, CONSTRUCTIVE, (what is). 2 Mas. (U. S.) 536; 14 Ga. 145; 1 Sax. (N. J.) 204; 6 Paige (N. Y.) 189; 5 Sandf. (N. Y.) 157, 165; 18 Wend. (N. Y.) 407; 5 Binn. (Pa.) 134; 6 Serg. & R. (Pa.) 118, 124; 10 *Id.* 39.

NOTICE, DUE, (what is). 1 McAll. (U. S.) 419.

NOTICE, IMPLIED, (of prior unregistered deed, what is). 3 Pick. (Mass.) 149.

NOTICE IN LIEU OF SERVICE.—

In lieu of personally serving a writ of summons (or other legal process), in English practice, the court occasionally allows the plaintiff (or other party) to give notice in lieu of service, such notice being such as will in all probability reach the party (Orders ix. and x). This notice is peculiarly appropriate in the case of a foreigner out of the jurisdiction, whom it is desired to serve with a writ of summons. 10 Ch. D. 550.

NOTICE IN WRITING, (in a statute). 68 Me. 511.

NOTICE, LEGAL, (what is). 5 Binn. (Pa.) 129.

NOTICE OF ACTION.—When a statute imposes public or quasi-public duties on a person, such as a magistrate, constable, surveyor of highways, or the like, it frequently provides that before any action is brought against him for acts done in execution of his office, one month's notice of the intended action shall be served on him. Chit. Gen. Pr. 1303 *et seq.* *See, also*, AMENDS; NOT GUILTY.

NOTICE OF ADMISSION.—*See* ADMISSION, § 2.

NOTICE OF APPEARANCE.—*See* APPEARANCE, § 3.

NOTICE OF BREACHES.—*See* PARTICULARS OF BREACHES AND OBJECTIONS.

NOTICE OF CLAIM.—*See* CITATION, § 2, *n.*

NOTICE OF DECREE OR ORDER.

—In the English Chancery Division, when an action is instituted for the administration of the estate of a deceased person, or for the execution of the trusts of an instrument, by or against one member of a class of persons, (*e. g.* one of the executors, administrators, residuary legatees, next of kin, trustees, or *cestuis qui trust*), it is not necessary to join the other members of the class as plaintiffs or defendants in the action, provided they are served with notice of the decree or order directing the administration of the estate or execution of the trusts. After being so served they will be bound by the proceedings in the action in the same manner as if they had been originally made parties. (Stat. 15 and 16 Vict. c. 86; Dan. Ch. Pr. 358.) Thus.

if an administration action is commenced by an executor against one of the residuary legatees, the other residuary legatees must be served with notice of the decree or order. If a person so served wishes to see that the action is properly conducted, he should obtain an order for leave to attend the proceedings (*Id.* 363), on which he is entitled to be heard as if he were a party.

NOTICE OF DISHONOR.—*See* BILL OF EXCHANGE, § 5.

NOTICE OF INQUIRY.—The plaintiff must give a written notice of executing a writ of inquiry to the defendant or his attorney. Notice of inquiry, and of continuance of inquiry, had to be given in town; but countermand of notice of inquiry might be given either in town or country, unless otherwise ordered by the court or a judge. Ten days' notice shall be given unless it is to be short notice, and then four days are sufficient. 2 Chit. Arch. Pr. (12 edit.) 998. *See* NOTICE OF TRIAL; WRIT OF INQUIRY.

NOTICE OF JUDGMENT.—A written notice required by statute in some of the States, to be served by the party entering a judgment upon his adversary or his attorney, informing him of the time of entry and character of the judgment. Until this notice is served the time within which the unsuccessful party may appeal from the judgment does not commence to run.

NOTICE OF LIS PENDENS.—A notice that a suit is pending, filed to notify all persons not to deal with defendant, in respect to the subject-matter of the suit, except at their peril. *See* LIS PENDENS.

NOTICE OF MOTION.—A notice in writing, entitled in a cause, dated and signed by the attorney of the party in whose behalf it is given, and addressed to the opposite party or his attorney; stating that, on a certain day designated, a motion will be made to the court for the purpose or object stated.—*Burrill*.

NOTICE OF OBJECTIONS.—*See* PARTICULARS OF BREACHES AND OBJECTIONS.

NOTICE OF PROTEST.—*See* BILL OF EXCHANGE, § 5.

NOTICE OF PROTEST, (effect of). 9 Pet. (U. S.) 83; 10 *Id.* 580; 1 Harr. (N. J.) 397; 5 Wend. (N. Y.) 44, 587; 15 *Id.* 304; 2 Ad. & E. n. s. 388, 410; 13 L. J. N. s. Exch. 17; 12 Mees. & W. 51.

NOTICE OF TRIAL.—As soon as the pleadings in an action are closed, the plaintiff may give the defendant notice of trial of the action, and thereby specify the mode in which he desires the action to be tried. If the plaintiff fails to give such a notice within a certain time, the defendant may give notice of trial, or move to dismiss the action for want of prosecution. The action will be tried in the manner mentioned in the notice, unless it is a case in which the party to whom it is given is entitled to have the action tried before a jury and gives a counter-notice to that effect, or unless the court orders it to be tried in a particular way. Metropolitan I. C. Rail. Co. v. M. Rail. Co., 5 Ex. D. 196. *See* ACTION; TRIAL.

NOTICE OF WRIT OF SUMMONS.—

§ 1. **Service on foreigner.**—In an action in the English High Court, when the defendant is a foreigner, and is out of the jurisdiction, and the plaintiff has obtained leave to serve him out of the jurisdiction, the defendant is served with a notice giving the substance of the writ of summons, and stating what will be the result of his not entering an appearance within the time allowed. (Rules of Court, xi.; Forms (A) 1.3; *Westman v. A. E. M. Snickrefabrik*, 1 Ex. D. 237; *In re Howard*, 10 Ch. D. 550.) This is done in lieu of serving the defendant with the writ of summons itself, because it is considered inappropriate to serve the subject of a foreign State with a mandate in the queen's name.

§ 2. **Substituted service.**—When a defendant is suspected of keeping out of the way to avoid service, the court sometimes allows substituted service to be effected by notice of the writ being given to the defendant, (Rules of Court, ix. 2, x.) *e. g.* by advertisement. *See* SERVICE.

NOTICE, PRESUMPTIVE, (defined). 1 Cow. (N. Y.) 623, 642.

NOTICE, REASONABLE, (what is). 1 Pa. 462.

NOTICE, THREE MONTHS', (in an agreement). 3 Campb. 510.

NOTICE TO ADMIT.—In the practice of the English High Court, either party to an action may call on the other party by notice to admit the existence and execution of any document, in order to save the expense of proving it at the trial; and the party refusing to admit must bear the costs of proving it, unless the judge certifies that the refusal to admit was reasonable. No costs of proving a document will in general be allowed, unless such a notice is given. Rules of Court, xxxii. 2.

NOTICE TO PLEAD.—This was necessary in all cases before the plaintiff could sign judgment for want of a plea.

It was usually indorsed on the declaration when delivered, and was generally a notice to plead within eight days. *See* 1 Chit. Arch. Pr. (12 edit.) 32, 244, 575, 588.

NOTICE TO PRODUCE.—

§ 1. *At trial*.—If one of the parties to an action is in possession of any document which would be evidence for the other party if produced, the latter may give him notice to produce it at the trial, and, in default of production, may give secondary evidence of it. *Best Ev.* 611; *Common Law Proc. Act*, 1852, § 119.

§ 2. *Interlocutory*.—At any time before the trial of an action, any party to an action or other proceeding may give any other party notice to produce for his inspection any document referred to in the pleadings or affidavits of the party to whom the notice is given. If he refuses to produce them without good cause, an order for inspection may be obtained from the court. *See* INSPECTION; PRODUCTION.

NOTICE TO QUIT.—

§ 1. Where there is a tenancy of land from year to year, or from two years to two years, or other like indefinite period, a notice to quit is required, to enable either the landlord or the tenant to determine the tenancy without the consent of the other. As a general rule, no particular form is required, but the notice is usually in writing and formal.

§ 2. In some cases the length of notice required is fixed by special agreement between the lessor and lessee, in other cases it is fixed by a local custom, and in other cases by the general law of the land. Where a tenancy from year to year exists without a special agreement or local custom as to its determination, half a year's notice, expiring at the end of the first or some other year of the tenancy, must be given, in England; thus, if the tenancy commenced on the 25th March, notice to quit must be given on or before the 28th September, expiring on the 25th March following.

§ 3. In the case of land subject to the *English Agricultural Holdings Act*, 1875, a year's notice to quit is required instead of half a year. *Woodf. Land. & T.* 800 *et seq.*; *Chit. Cont.* 314.

NOTICE TO THIRD PARTY.—*See* CITATION, § 2, *n.*

NOTICE TO TREAT.—The notice which a railway company or other public body having compulsory powers for the purchase of land is bound to give to the persons interested in any land which it is empowered and desires to purchase. The notice demands particulars of the estate and interest of the persons to whom it is given, and states that the company is willing to treat for the purchase of the land. When a person receives such a notice, he may send a notice of claim to the company, stating his interest in the land, and the compensation he claims, and requiring the amount to be settled by arbitration in case of dispute. In other cases the compensation is fixed by a jury. *Lands Clauses Act*, 1845, § 18 *et seq.*; *Hodg. Railw.* 170 *et seq.*

NOTIFIED, (defined). 31 Conn. 381.

NOTING.—In the law of bills of exchange, noting is a minute or memorandum made by a notary on a bill which he has presented, and which has been dishonored. It consists of his initials and charges, and the date, and, in the case of foreign bills, is considered as preparatory to a formal protest (*q. v.*) *Byles Bills* 257.

NOTITIA.—Knowledge; information; intelligence; notice.

NOTORIAL.—The Scotch form of *notarial* (*q. v.*)—*Bell Dict.*

NOTORIOUS.—In the law of evidence, matters deemed notorious do not require to be proved. There does not seem to be any recognized rule as to what matters are deemed notorious; cases have occurred in which the state of society or public feeling has been treated as notorious, *e. g.* during times of sedition. *Best Ev.* 354.

NOTOUR.—In Scotch law, open; public; notorious; applied to such acts as adultery, bankruptcy, &c.—*Bell Dict.*

NOTWITHSTANDING, (in articles of marriage settlement). 1 Atk. 439.

— (in a covenant). 8 Barn & C. 185; 3 Lev. 46; *Litt.* 62, 65, 80.

— (in a will). 12 Wend. (N. Y.) 684.
NOTWITHSTANDING ANY ACT, (in a bond). 7 Serg. & R. (Pa.) 40.

NOTWITHSTANDING ANY ACT DONE, (in a covenant). 1 Saund. 60.

NOTWITHSTANDING ANY ACT DONE BY HIM, (in a covenant). Cro. Car. 498.

NOTWITHSTANDING ANY ACT MADE BY THE TESTATOR OR HIS ANCESTORS, (in a covenant). Cro. Car. 107.

NOUGHT, (defined). 4 Watts (Pa.) 374.

NOVA constitutio futuris formam imponere debet non præteritis (2 Inst. 292): A new state of the law ought to affect the future, not the past.

NOVA CUSTOMA.—An imposition or duty. See **ANTIQUA CUSTUMA**.

NOVA OBLATA.—See **OBLATA**.

NOVA STATUTA.—The statutes beginning with Edward III. See **VETERA STATUTA**.

NOVÆ NARRATIONES.—New counts. The collection called *Novæ Narrationes* contains pleadings in actions during the reign of Edward III. It consists principally of declarations, as the title imports; but there are sometimes pleas and subsequent pleadings. The *Articuli ad Novas Narrationes* is usually subjoined to this little book and is a small treatise on the method of pleading. It first treats of actions and courts, and then goes through each particular writ, and the declaration upon it, accompanied with directions, and illustrated by precedents. 3 Reeves c. xvi. 152.

NOVALE.—Land newly ploughed and converted into tillage, and which had not been tilled before within the memory of man; also, fallow land.

NOVATIO.—Novation. (*q. v.*)

Novatio non præsumitur: A novation is not presumed.

NOVATION is where the promisee in a contract agrees to accept another person as the person to be bound in lieu of the original promisor. The term is practically confined to cases where a company or partnership transfers its liabilities to another company or partnership, in which case the question frequently arises whether there has been a novation, *i. e.* whether the creditors or promisees have agreed to accept the liability of the new company or partnership in discharge of the old company or partnership. (1 Lind. Part. 450; *Wilson v. Lloyd*, L. R. 16 Eq. 60; *Bilborough v. Holmes*, 5 Ch. D. 255.) The term is borrowed from the Roman law. *Hunt. Rom. L. 445 et seq.*

NOVATION, (defined). 48 Miss. 451; 13 Am. Dec. 296 n.

NOVEL ASSIGNMENT.—See **NEW ASSIGNMENT**.

NOVEL DISSEISIN.—See **ASSIZE OF NOVEL DISSEISIN**.

NOVELLÆ.—See **CORPUS JURIS CIVILIS**.

NOVELTY.—An objection to a patent on the ground that the invention is not new or original, is called an objection for want of novelty. It is a fatal objection, even if it only applies to part of the invention, unless the patentee has filed a disclaimer. See **DISCLAIMER**, § 2; **PATENT RIGHT**.

NOVITAS.—Novelty; newness.

Novitas non tam utilitate prodest quam novitate perturbat (Jenk. Cent. 167): A novelty does not benefit so much by its utility, as it disturbs by its novelty.

NOVITER PERVENTA, or NOVITER AD NOTITIAM PERVENTA.—

In ecclesiastical procedure, facts "newly come" to the knowledge of a party to a cause. Leave to plead facts *noviter perventa* is generally given, in a proper case, even after the pleadings are closed, (Phillim. Ecc. L. 1257; Rog. Ecc. L. 723,) or on appeal. Macph. Jud. Com. 213.

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum (10 Co. 42): A new adjudication does not make a new law, but declares the old; because adjudication is the utterance of the law, and by adjudication the law is newly revealed which was for a long time hidden.

NOVUS HOMO.—A pardoned criminal or discharged insolvent is so called.

Now, (in an agreement). 4 Man. & G. 95, 99.

— (in a deed). 5 Halst. (N. J.) 26.

— (in Gen. Stat. ch. 22, § 28). 20 Kan. 390, 396.

— (in a will). 1 Barn. & C. 350; 1 P. Wms. 597.

— (in a will, when refers to its date). 1 Jarm. Wills 277, 278.

Noxa sequitur caput (Jur. Civ.): Guilt follows the person.

Where a slave did any damage, his master became liable therefor in a *noval action* to the injured; and this liability attached to the master for the time being, *i. e.* followed the principal (*caput*). The master might deliver up the slave as a *noxa*, and so discharge himself of liability.—*Brown*.

NOXAL ACTION.—An action for damage done by slaves, or irrational animals. Sand. Inst. (5 edit.) 467.

Noxious, (defined). Burr. 337.

— (in statute punishing abortion). 14 Vr. (N. J.) 89, 91.

NUCES COLLIGERE.—To collect nuts. This was formerly one of the works or services imposed by lords upon their inferior tenants. Par. Antiq. 495.

NUDA — NUDE — NUDUS. — Naked; bare; void of consideration.

Nuda pactio obligationem non parit (D. 2, 14, 7, § 4): A naked agreement (*i. e.* without consideration) does not beget an obligation.

NUDE CONTRACT. — One made without any consideration, upon which no action will lie, in conformity with the maxim *ex nudo pacto non oritur actio*. 2 Bl. Com. 445; Add. Cont. (6 edit.) 3-8.

NUDE MATTER. — A bare allegation of a thing done.

NUDUM PACTUM. — See NUDE CONTRACT.

NUDUM PACTUM, (defined). 1 Fonb. 335 *n.* (what is). 1 Cai. (N. Y.) 584; 5 Serg. & R. (Pa.) 358, 361.
—— (what is not). 5 Serg. & R. (Pa.) 8.

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem (Plowd. 309): A naked contract is where there is no consideration except the agreement; but where there is a consideration, it becomes an obligation and gives a right of action.

NUISANCE is either public (common) or private.

§ 1. Public, or common. — A public or common nuisance is an act which interferes with the enjoyment of a right which all members of the community are entitled to, such as the right to fresh air, to travel on the highways, not to be exposed to danger to health from infectious diseases, unwholesome food, &c. Hence, if a person carries on a manufacture from which noxious fumes are emitted, or exposes for sale unwholesome food, or stops up or obstructs a highway, or allows buildings belonging to him near a highway to become ruinous, he commits a public nuisance. The remedy for a public nuisance (which is a misdemeanor) is by indictment or information, (Steph. Cr. Dig. 108 *et seq.*; 4 Steph. Com. 270; where a number of statutory nuisances (many of which are now rarely met with) are referred to,) and in certain cases by abatement (*q. v.*); and if special damage is caused to an individual, he has an action for damages or injunction against the wrong-doer. (Broom Com. L. 718, 914; *Hill v. Metropolitan Asylums Board*, 4 Q.

B. D. 483; 6 App. Cas. 193.) Modern legislation has also provided a summary mode of dealing with nuisances. Thus, under the English Public Health Acts, local sanitary authorities are required to ascertain by inspection what nuisances exist within their districts, and the local magistrates are empowered to deal summarily with such as are found to exist. See the Public Health Act, 1875, § 91 *et seq.*; as to the Metropolis, see the acts mentioned in the fifth schedule to that act.

§ 2. Private nuisances. — A private nuisance is such a continuous infringement of a natural right of property as would in process of time give the wrong-doer an easement or prescriptive right to do an act which was originally tortious. (Gale Easem. 482, 502.) The infringement of an acquired right (*e. g.* an easement) is properly called a "disturbance" (*q. v.*) Thus, if a man builds a house so close to mine that his roof overhangs mine, and the water flows off his roof upon mine, this is a nuisance for which an action will lie. Similarly, if my neighbor carries on a noisy or offensive trade, or if any one injuriously interferes with my water-course, market, ferry, or the like. The remedy for a nuisance is either by abatement (*q. v.* § 1), or by action for damages, injunction, or *mandamus*. 3 Steph. Com. 402 *et seq.* See *Vernon v. Vestry of St. James*, 16 Ch. D. 449. See DISTURBANCE; PRESCRIPTION; TORT.

NUISANCE, (defined). 14 Conn. 317; 5 Barb. (N. Y.) 79, 82; 32 Tex. 208.

—— (what is). 2 Black (U. S.) 418; 3 Cranch (U. S.) C. C. 620; 12 Pet. (U. S.) 91; Pet. (U. S.) C. C. 390; 31 Conn. 479, 487; 4 Ind. 264; 29 *Id.* 517; 3 Barb. (N. Y.) 157; 9 *Id.* 161, 350; 18 *Id.* 222; 38 *Id.* 282, 286; 4 Cow. (N. Y.) 351; 6 *Id.* 189; 83 *Id.* 146; 5 Hill (N. Y.) 121; 1 *Hilt.* (N. Y.) 126, 128; 21 How. (N. Y.) Pr. 301; 13 Johns. (N. Y.) 312; 26 N. Y. 287, 298; 28 *Id.* 396; 63 *Id.* 568; 9 Paige (N. Y.) 575; 4 Robt. (N. Y.) 449; 15 Wend. (N. Y.) 397; 23 *Id.* 354, 446; 70 N. C. 67; 5 Binn. (Pa.) 277; 19 Pa. St. 412; 52 *Id.* 243; 74 *Id.* 230, 241; 6 Phil. (Pa.) 82; 4 McCord (S. C.) 472; 3 Sneed (Tenn.) 134; 13 Rep. 555.

—— (what is not). 2 Black (U. S.) 485; 18 How. (U. S.) 518; 5 McLean (U. S.) 425; 21 Conn. 218; 28 Ind. 79; 10 La. Ann. 431, 433; 34 Mich. 212, 218; 2 C. E. Gr. (N. J.) 75; 9 *Id.* 49; 1 Stockt. (N. J.) 186; 7 Vr. (N. J.) 283; 2 Barb. (N. Y.) 104; 3 Hill (N. Y.) 604; 25 Pa. St. 161, 182; 78 *Id.* 29, 38; 2 Sneed (Tenn.) 263.
—— (in a covenant). L. R. 11 Eq. 338.

NUISANCE, (in statute for removal of). L. R. 7 Q. B. 550.

— (remedies for). 1 Chit. Gen. Pr. 383. NUISANCE, COMMON, (defined). 5 Port. (Ala.) 279, 311; 8 Bac. Abr. tit. Nuisance.

NUISANCE, PUBLIC, (what is). 2 Ind. 440; 8 Barb. (N. Y.) 427; 7 Hill (N. Y.) 575; 25 How. (N. Y.) Pr. 139; Bright. (Pa.) 318; 16 Pa. St. 463; 2 Watts (Pa.) 26; 3 Am. L. Reg. 79, 87.

— (what is not). 9 Mass. 555; 34 Pa. St. 275.

— (how abated). 14 Wend. (N. Y.) 250.

NUISANCE, PRIVATE, (what is). 4 Sandf. (N. Y.) Ch. 357.

NUL.—No; none. A law-French negative particle commencing many phrases, among which are—

NUL AGARD.—No award. A plea in an action on an arbitration bond, denying the making of any legal award.

Nul charter, nul vende, ne nul done vault perpetualment, sile donor n'est seise al temps de contracts de 2 droits, sc. del droit de possession et del droit de propertie (Co. Litt. 286): No grant, no sale, no gift, is valid forever, unless the donor, at the time of the contract, is seised of two rights; namely, the right of possession, and the right of property.

NUL DISSEISIN, PLEA OF.—A traverse in real actions, that there was no disseisin; it was a species of the general issue.

Nul prendra advantage de son tort demesne (2 Inst. 713): No one shall take advantage of his own wrong.

Nul sans damage avera error ou attain (Jenk. Cent. 323): No one shall have error or attain unless he has sustained damage.

NUL-TIEL AGARD.—No such award. A plea traversing an award. Under this plea a defendant could not object to the award in point of law. 1 Salk. 72; 1 Saund. 327 a.

NUL TIEL RECORD.—The name given to that plea or defense which a defendant sets up to an action brought against him on some matter of record, when he avers that "no such record" as that alleged by the plaintiff exists. 3 Bl. Com. 330. See CONTRACTS, § 10; JUDGMENT; MITTIMUS; RECORD; TRIAL.

NUL TORT, PLEA OF.—A traverse in a real action that no wrong was done; it was a species of the general issue.

NUL WASTE.—A plea raising the general issue in the old action of waste.

NULL.—Not of any effect or validity; having no force or efficacy. Usually

coupled with "void" by means of the conjunctive "and."

NULL AND VOID, (in a statute). 2 Ad. & E. 84, 94.

NULLA BONA.—No goods. The name given to the return made by a sheriff, sequestrator, or other officer, to a writ or warrant authorizing him to seize the chattels of a person, when he has been unable to find any to seize. It is a not unfrequent return to a writ of *fi. fa.* (q. v.)

Nulla curia quæ recordum non habet potest imponere finem, neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo (8 Co 60): No court which has not a record can impose a fine, or commit any person to prison; because those powers belong only to courts of record.

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia (Co. Litt. 78): Impossibilities or dishonesties are not to be presumed; but honesty, and truth, and possibility.

Nulla pactione effici potest ut dolus præstetur: I cannot effectually contract with any one that he shall charge himself with the fraud which I commit.

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestia (Co. Litt. 394): Without modesty, no virtue, no knowledge, can preserve its place and dignity.

NULLITY.—Want of force or efficacy; an error in litigation which is incurable, and thus differs from an irregularity which is amendable.

NULLITY, (defined). 1 Cal. 281.

— (distinguished from an irregularity). 40 Wis. 363.

— (in legal proceedings). 42 Mich. 469, 471; 1 T. R. 462.

NULLITY OF MARRIAGE.—

Where a marriage is void, on the ground that it was to the knowledge of both parties celebrated without the proper formalities, or that one of them was not single at the time, or that they are within the prohibited degrees of consanguinity or affinity, or that one or both of them were not consenting to the marriage, or are unable to perform the duties of matrimony, then either of them, unless the defect or defect invalidating the marriage lies in him or her only, may present a petition to the

proper court and obtain a decree declaring the nullity of the marriage. Browne Div. 52 *et seq.* See DECREE, § 3; DIVORCE.

NULLIUS FILIUS.—A son of nobody, *i. e.* a natural child.

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit (Co. Litt. 383): The authority of no man ought to prevail with us, so that we should not adopt better things, if another bring them to us.

NULLUM ARBITRIUM.—A plea the same as *nul agard* (*q. v.*)

Nullum crimen majus est inobedientia (Jenk. Cent. 77): No crime is greater than disobedience.

A maxim applicable to the refusal by a sheriff to return a writ.

Nullum exemplum est idem omnibus (Co. Litt. 212): No example is the same in every part.

Nullum iniquum est præsumendum in jure (7 Co. 71): No iniquity is to be presumed in law.

Nullum simile est idem nisi quatuor pedibus currit (Co. Litt. 3): No like is identical, unless it run on all fours.

NULLUM TEMPUS ACT.—See next title.

Nullum tempus aut locus occurrit regi (2 Inst. 273; Jenk. Cent. 83): No time or place affects the king.

This is a maxim grounded on the principle that no laches can be imputed to the sovereign, whose time and attention are supposed to be occupied by the cares of government (Chit. Prerog. 379); and, therefore, the ordinary Statutes of Limitations do not bind the crown. But by the Nullum Tempus Act (9 Geo. III. c. 16), and Stat. 24 and 25 Vict. c. 62, the common law rule has been altered, and the crown is barred by lapse of time in cases within those acts. The Stats. 7 and 8 Vict. c. 106; 23 and 24 Vict. c. 53, and 24 and 25 Vict. c. 62, apply to the lands of the Duchy of Cornwall. Brown Lim. 239 *et seq.*

NULLUM TEMPUS OCCURRIT REGI, (applied). 2 Mar. (U. S.) 312; 23 Wend. (N. Y.) 446; 1 Bay (S. C.) 26; 1 Hen. & M. (Va.) 85; 6 Munf. (Va.) 240.

NULLUS.—No; no person. The commencing word of several phrases and maxims, such as the following—

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam (Co. Litt. 134): No other than the king can command the bishop to make an inquisition.

Nullus commodum capere potest de injuria sua propria (Co. Litt. 148): No one can obtain an advantage by his own wrong.

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum receptavit et confortavit (3 Inst. 138): No one is called an accessory after the fact but he who knew the principal to have committed a felony, and received and comforted him.

Nullus dicitur felo principalis nisi actor, aut qui præsens est, abettans aut auxilians ad feloniam faciendam: No one is called a principal felon except the party actually committing the felony, or the party present aiding and abetting in its commission.

Nullus idoneus testis in re sua intelligitur (D. 22, 5, 10): No person is understood to be a competent witness in his own cause.

Nullus jus alienum forisfacere potest: No man can forfeit another's right.

Nullus simile est idem, nisi quatuor pedibus currit: No like is exactly identical unless it runs on all fours.

Nullus videtur dolo facere qui suo jure utitur (D. 50, 17, 55): No one is considered to act with guile who uses his own right.

NUMBER OF SITES, (in indictment for erecting). 15 Mass. 240.

NUMBER OF SHEEP, (in a will). 3 Atk. 121.

NUMERATA PECUNIA.—Money counted; money paid by count.

NUMMATA.—The price of anything in money, as *denariata* is the price of a thing by computation of pence, and *librata* of pounds.

NUMMATA TERRÆ.—An acre of land.—*Spel. Gloss.*

Nummus est mensura rerum commutandarum: Money is the measure of things to be exchanged.

NUNC PRO TUNC.—In procedure, the court sometimes directs a proceeding to be dated of an earlier date than that on which it was actually taken, or directs that the same effect shall be produced as if it had been taken at an earlier date. Thus, it will direct a judgment to be ante-dated if the entry of it has been delayed by the act of the court, or if the plaintiff has died between the hearing and the date when the judgment was delivered. (See *Turner v. L. & S. W. Rail. Co.*, L. R., 17 Eq. 561) This is called entering a judgment "*nunc pro tunc*," *i. e.* "now for then."

NUNC PRO TUNC, (entry of judgment). 5 Watts (Pa.) 104, 105.

NUNCIATIO.—In the civil law, a solemn declaration, usually in prohibition of a thing; a protest.

NUNCIO.—A messenger, servant, &c.; a spiritual envoy from the pope.

NUNCUPATE.—To declare publicly and solemnly.

NUNCUPATIVE WILL.—An oral will depending merely upon oral evidence, having been declared or dictated by the testator previous to his death, before a sufficient number of witnesses, and afterwards reduced into writing. Such wills are valid in most of the States, when made by soldiers or seamen, *in extremis*, and while engaged in active service, and not otherwise. In England, however, all wills must now be reduced into writing at the time they are made. (1 Vict. c. 26, § 1.) In the interval between the Statute of Frauds (29 Car. 2 c. 3) and the New Wills Act (1 Vict. c. 26) nuncupative wills were good for estates not exceeding £30 in all, where the will was pronounced before three witnesses and was reduced into writing within six days after it was made, or was proved within six months of the making; but before the Statute of Frauds they were valid without limit as to estate, just as they always were in Roman law if made in the presence of seven witnesses. Just. ii. 10, 14.

NUNCUPATIVE WILL, (what is). 5 C. E. Gr. (N. J.) 473; 20 Am. Dec. 44 n.

NUNDINÆ.—A fair or fairs.

NUNDINATION.—Traffic at fairs and markets; any buying and selling.

NUNQUAM.—Never. The initial word of several Latin phrases and maxims, such as the following—

Nunquam concluditur in falso: We never conclude with a fiction.

Nunquam crescit ex post facto præteriti delicti æstimatio (Bac. Max. Reg. 8): The estimation of a past offense is never increased by an after fact.

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium (4 Inst. 84): Recourse is never had to what is extraordinary, till what is ordinary fails.

NUNQUAM INDEBITATUS.—See NEVER INDEBTED.

Nunquam præscribitur in falso: There is never prescription in case of falsehood.

Nunquam res humanæ prospere succedunt ubi negliguntur divinæ (Co. Litt. 15): Human things never prosper where divine things are neglected.

NUPER OBIT.—He lately died. An abolished writ that lay for a sister and co-heir, deformed by her coparcener of lands or tenements, whereof their father, brother, or any other common ancestor died seised of an estate in fee-simple.—*F. N. B.* 197.

NUPER VICECOMES.—An ex-sheriff. See DISTINGAS, § 3.

NUPTIAL.—Pertaining to marriage; constituting marriage; used or done in marriage.

Nuptias non concubitus sed consensus facit (Co. Litt. 33): Not cohabitation but consent makes the marriage.

NURTURE.—See GUARDIAN, § 7.

NURUS.—A daughter-in-law.

NYCTHEMERON.—The whole natural day, or day and night, consisting of twenty-four hours.—*Encycl. Lond.*

NYMPHOMANIA.—See EROTO-MANIA.

O.

O. C.—An abbreviation for *ope consilio* (q. v.)

O. NI.—It was the course of the English Exchequer, as soon as the sheriff entered into and made up his account for issues, amercements, &c., to mark upon each head *O. Ni.*; which denoted *oneratur, nisi habeat sufficientem exonerationem*, and presently he became the king's debtor, and a *debet* was set upon his head; whereupon the parties *paravalle* became debtors

to the sheriff, and were discharged against the king, &c. 4 Inst. 116.

But sheriffs now account to the commissioners for auditing the public accounts.—*Wharton*.

OATH.—

§ 1. Oaths are of two kinds, according as they relate to the truth of a statement as to past events, or to an intention to do

something at a future time. The latter are called "promissory oaths."

§ 2. **Evidentiary oaths—Judicial—Extrajudicial—Voluntary.**—An oath verifying a statement as to past events is a religious asseveration by which the party calls his God to witness that what he says is the truth; consequently, an oath may be administered to a person who believes in a God, although he is not a christian; while it cannot in the case of atheists or very young children, who have no religious belief. (Best Ev. 62, 228. See AFFIRM, § 3.) Such an oath is called "judicial," when given in a matter pending before a tribunal, and "extrajudicial," or "voluntary" in other cases. Declarations (*q. v.* § 6) have been substituted for extrajudicial oaths in most cases. As to the punishment for making a false oath, see FALSE SWEARING; PERJURY. See, also, AFFIDAVIT; DEPOSITION.

§ 3. **Promissory oaths** include the oath of allegiance, (see ALLEGIANCE; NATURALIZATION); the official oath, taken by certain high officers on accepting office; the parliamentary oath, taken by members of legislative bodies before taking their seats; and the judicial oath, taken by the principal judges and justices of the peace on accepting office. Jurors, executors, administrators, and some other persons are also required to take an oath for the due performance of their duties.

OATH, (defined). 2 Ala. 354; 10 Ohio 123; 1 Leach C. C. 430.

— (what is an administration of, by the court). 48 Cal. 197; 41 Conn. 206.

OATH AGAINST BRIBERY.—One which could formerly have been administered to a voter at an election for members of parliament. Abolished by 17 and 18 Vict. c. 102.

OATH, CORPORAL, (synonymous with "solemn oath"). 1 Ind. 184.

OATH OF CALUMNY.—See CALUMNIA JURJURANDUM.

OATH, ON, (in an indictment). Add. (Pa.) 180.

OATH-RITE.—The form used at the taking of an oath.

OATH, SWEAR AND AFFIDAVIT, (in a statute, what include). 13 and 14 Vict. c. 21, § 4.

OB.—About; for; on account of. A few Latin phrases and maxims, commence with this

word. See a larger number of similar ones commencing with *in*.

OB CONTINENTIAM DELICTI.—On account of the contaminating character of the offense. This use of the word *continentia* is probably without classical authority. The phrase expresses a ground for extending a sentence of condemnation, in maritime law, to property not confiscated on other grounds; as in the case of a vessel condemned for carrying despatches for the enemy in time of war, the sentence may be extended to the cargo *ob continentiam delicti*. (The Atlanta, 6 Rob. Adm. 440.)—Abbott.

OB CONTINGENTIAM.—On account of contingency; by reason of similarity. See 7 Bell App. Cas. 163.

Ob infamiam non solet juxta legem terræ aliquis per legem apparentem se purgare, nisi prius convictus fuerit vel confessus in curia (Glanv. lib. 14, c. ii.): On account of evil report, it is not usual, according to the law of the land, for any person to purge himself, unless he have been previously convicted, or confessed in court.

OB TURPEM CAUSAM.—For a base or immoral cause or consideration. See EX TURPI CAUSA NON ORITUR ACTIO.

OBÆRATUS.—Among the Romans, a debtor who was compelled to serve his creditor until his debt was discharged.

OBEDIENTIA.—(1) An office, or the administration of it; (2) a kind of rent; (3) submission; obedience.

Obedientia est legis essentia (11 Co. 100): Obedience is the essence of law.

OBEDIENTIARIUS.—A monastic officer.—*Du Cange*.

OBIT.—A funeral solemnity or office for the dead; the anniversary office. The tenure of obit, or obituary, or chantry lands is taken away by 1 Edw. VI. c. 14, and 15 Car. II. c. 9.

OBITER DICTUM.—See DICTUM.

OBITER DICTUM, (defined). 62 N. Y. 47, 58. OBJECT, (in State constitution). 11 So. Car. 458.

OBJECTION.—See EXCEPTION.

OBJECTS CHARGED WITH AN INTERNAL TAX, (in act of July 13th, 1866, § 9). 8 Blatchf. (U. S.) 257.

OBJECTS OF A POWER.—Where property is settled subject to a power given to any person or persons to appoint the same among a limited class, the members of the class are called the "objects of the power." Thus, if a parent has a power to

appoint a fund among his children, the children are called the "objects of the power."—*Moxley & W.*

OBJURGATRICES.—Scolds, or unquiet women, punished with the cucking-stool. *See* CASTIGATORY.

OBLATA.—Gifts or offerings made to the king by any of his subjects; old debts, brought as it were together from preceding years, and put on the present sheriff's charge.

OBLATA TERRÆ.—Half an acre, or, as some say, half a perch of land.—*Spel. Gloss.*

OBLATI.—Voluntary slaves of churches or monasteries.

OBLATI ACTIO.—A civil law action against one who had *offered* to the plaintiff a stolen thing, which was found in his possession. *Inst.* 3, 1, 4.

OBLATIO.—Offering; tender. (1) A civil law term signifying a tender by a debtor to his creditor of money in payment of the debt; (2) an offering to the church. *See* OBLATIONS.

Oblationes dicuntur quæcunque a piis fidelibusque christianis offertur Deo et ecclesiæ, sive res solidæ sive mobiles (2 *Inst.* 389): Those things are called oblations which are offered to God and to the church by pious and faithful christians, whether they are movable or immoveable.

OBLATIONS, or obventions, are offerings or customary payments made, in England, to the minister of a church, including fees on marriages, burials, mortuaries, &c., (*q. v.*) and Easter offerings. (2 *Steph. Com.* 740; *Phillim. Ecc. L.* 1596.) They may be commuted by agreement. *Stat.* 2 and 3 *Vict.* c. 62, § 9.

OBLIGATIO.—An obligation (*q. v.*); a bond; a contract, and the liabilities arising thereunder.

OBLIGATION.—

§ 1. **Obligation—Right and duty.**—In its most general sense, especially in jurisprudence, obligation signifies the relation between two persons, one of whom can take judicial proceedings or other legal steps to compel the other to do or abstain from doing a certain act. (*See* the definitions of obligation collected in *Holl. Jur.* 162.) Although it includes both the right of the one and the duty of the other, the term is more frequently used to denote the latter.

§ 2. With reference to the origin and nature of obligations, *see* **RIGHT.**

With reference to their remedies, obligations are either perfect or imperfect.

§ 3. **Perfect.**—A perfect obligation is one which can be directly enforced by legal proceedings in the ordinary way: thus, if A. contracts to pay B. \$50, B. can enforce the obligation by bringing an action against A. *See* **REMEDY.**

§ 4. **Imperfect.**—An imperfect obligation is one which cannot be directly enforced, but still has some legal effects. Imperfect obligations may be divided into two classes (*Poll. Cont.* (2 edit.) 568): (1) An obligation may have been originally perfect, but have become imperfect from the remedy having been taken away; thus, if an action on a simple contract is not brought within the time prescribed by the statutes of limitations, the remedy by action is gone, although the right still exists, and may become available in certain cases; for instance, if a debt is barred by the statute, the debtor may nevertheless, if he has the chance, obtain payment of it by a lien or by appropriation of payment, or the remedy may be revived by an acknowledgment by the debtor (*see* the various titles). (2) An obligation is imperfect if no proceedings can be taken on it, because it does not satisfy the requirements of the law in regard to form or otherwise; thus, no action can be brought on a contract for the sale of land, under the Statute of Frauds, so long as the contract is not in writing signed by the party to be charged; but the contract nevertheless exists for other purposes, and, therefore, money paid under it cannot be recovered back merely on the ground of its not being enforceable by action. So attorneys, medical practitioners, &c., cannot recover remuneration for their services unless they have complied with the acts requiring them to take out certificates (*q. v.*) *Id.* 578

§ 5. **Obligation—Bond.**—In the technical sense of the term, an obligation is the same thing as a bond. In the case of a conditional bond, the operative part is sometimes called the obligation, to distinguish it from the condition. *See* **BOND.**

OBLIGATION, (defined). 6 *Otto* (U. S.) 606, 31 *Conn.* 261, 265; 14 *Ga.* 379; 15 *Id.* 321, 330.
— (as equivalent to "legal liability" or "legal duty"). 15 *How.* (N. Y.) *Pr.* 48.

OBLIGATION, (a protested draft is not). 85 Pa. St. 44.

— (joint and several, what is). 4 Houst. (Del.) 546.

— (of a contract, in United States constitution). 4 Wheat. (U. S.) 197; 12 *Id.* 257, 300.

— (in a statute). 4 Houst. Del.) 546; 5 Abb. (N. Y.) Pr. 162; 38 Barb. (N. Y.) 616; 23 Hun (N. Y.) 580.

OBLIGATION OF CONTRACTS.

—The United States constitution forbids the States to pass laws impairing the obligation of contracts. For a list of decisions interpreting this constitutional provision, see **IMPAIRING THE OBLIGATION OF CONTRACTS**.

OBLIGATION SOLIDAIRE.—This, in French law, denotes joint and several liability in English law, but is applied also to the joint and several rights of the creditors parties to the obligation. See **JOINT**, § 2 *et seq.*

OBLIGATIONS, ALL TIME, FOR MONEY DUE TO HIM, (in a will). 4 Pick. (Mass.) 349.

OBLIGATIONS, BONDS OR OTHER, (in a statute). 1 Bay (S. C.) 445.

OBLIGATORY, WRITING, (in a pleading). Hempst. (U. S.) 294.

OBLIGEE.—The person in whose favor an obligation or bond is entered into; a creditor.

OBLIGEE, (in a particular act). 1 Scam. (Ill.) 140.

OBLIGOR.—He who enters into an obligation or bond; a debtor.

OBLIQUA ORATIO.—The manner of reporting a speech or drawing an affidavit, in which "he," not "I," stands for the speaker in giving his words; and hence the words "you," "your," never occur, and every sentence begins with the word *that* expressed or understood, but generally expressed in the first sentence only. It is opposed to the *oratio directa*, sometimes called a "speech in the first person," in which the very words of the speaker are given.

OBLITERATION.—Erasure, or blotting out of written words. See **ALTERATION OF WRITTEN INSTRUMENTS**.

OBREPTION.—The obtaining a gift of escheat by a false suggestion.—*Bell Dict.*

OBROGATION.—In the civil law, the alteration of a law by the passage of one inconsistent with it.—*Culv. Lex.*

OBSCENE—OBSCENITY.—A publication is said to be obscene when its tendency is to deprave and corrupt those

whose minds are open to such immoral influences, and into whose hands it is likely to fall. (*See Reg. v. Hicklin*, L. R. 3 Q. B. 371; cited Shortt Copyr. 312.) Obscene publications or libels are punishable with fine or imprisonment, being misdemeanors. Many statutes have been passed, both in England and America, making obscene exhibitions indictable offenses, and, in some instances, giving magistrates power to issue warrants for searching houses for obscene books, pictures, &c., and to have them destroyed. Shortt 312; Steph. Cr. Dig. 105; Stat. 14 and 15 Vict. c. 100, § 79; 20 and 21 Vict. c. 83. See, also, *Commonwealth v. Landis*, 8 Phil (Pa.) 453, and the statutes of the several States. See **INDECENCY**.

OBSERVANCE AND PERFORMANCE, FOR THE TRUE AND FAITHFUL, (in an agreement). 4 Barn. & C. 103.

OBSIGNATORY.—Ratifying and confirming.

OBSOLETE.—A term sometimes applied to statutes and judicial decisions, which have become inoperative without being repealed, or expressly overruled, by subsequent statutes or decisions. "It must be a very strong case to justify the court in deciding that an act standing on the statute book, unrepealed, is obsolete and invalid. I will not say that such case may not exist—where there has been a non-user for a great number of years—where, from a change of times and manners, an ancient sleeping statute would do great mischief if suddenly brought into action—where a long practice inconsistent with it has prevailed, and especially where from other and later statutes it might be inferred that in the apprehension of the legislature the old one was not in force." *Per* Tilghman, C. J., in 13 Serg. & R. (Pa.) 452.

OBSOLETE, (when a statute is). 8 Wheel. Am. C. L. 153.

— (in a will). 2 Pa. 455.

OBSTANTE.—Withstanding; hindering. See **NON OBSTANTE**.

OBSTRUCTION.—Obligation; bond.

OBSTRUCT, (in a bill of complaint). 6 C. E. Gr. (N. J.) 27.

OBSTRUCT, (in 9 Stat. at L. 452, § 7). 4 Am. L. J. 489, 490.

OBSTRUCT OR HINDER, (in a statute). 14 Bush (Ky.) 479.

OBSTRUCTING EXECUTION OF PROCESS, (what is). 2 Tyler (Vt.) 212; 2 Wheel. Cr. Cas. xxxviii.

OBSTRUCTING PASSAGE OF THE MAIL, (what is). 3 Am. L. J. 123, 131; 2 Wheel. Cr. Cas. 513.

OBSTRUCTION.—This is the word properly descriptive of an injury to any one's incorporeal hereditament, *e. g.* his right to an easement, or *profti à prendre*; an alternative word being *disturbance*. On the other hand, infringement is the word properly descriptive of an injury to any one's patent rights or to his copyright. But *obstruction* is also a very general word in law, being applicable also to every hindrance of a man in the discharge of his duty (whether official, public or private).—*Brown*.

OBSTRUCTION, (defined). 6 Heisk. (Tenn.) 347, 368.

— (of highway). 39 Iowa 607.

— (in consolidation act of 1854, § 28). 78 Pa. St. 23.

OBSTRUCTION OF MAIL, (what is not). 3 Wheel. Cr. Cas. 304.

— (does not include arrest of carrier). Wilberf. Stat. L. 128.

OBSTRUCTION TO NAVIGATION, (what is not). 78 Pa. St. 23, 25.

OBTAINING AND RECOVERING PAYMENT, (in writ of *mandamus*). L. R. 4 II. L. 449.

Obtemperandum est consuetudini rationabili tanquam legi (4 Co. 38): A reasonable custom is to be obeyed as a law.

OBTEST.—To protest.

OBTULIT SE.—Offered himself. The emphatic words entered on the record under the old common law practice, where one party offered himself, and the other did not appear.

OBVENTION.—See **OBLATIONS**.

OBVIOUS, (defined). 12 Conn. 219, 229.

OCCASIO.—(1) A tribute which the lord imposed on his vassals or tenants for his necessity. (2) Hindrance: trouble; vexation by suit.

OCCASION MIGHT REQUIRE, AS, (in a covenant). 1 Holt 543; 7 Taunt. 411.

OCCASION SHALL REQUIRE, AS, (in a power of attorney). 7 Barn. & C. 278.

OCCASIONARI.—To be charged or loaded with payments or occasional penalties.

OCCASIONED, (in insurance policy). 22 N. Y. 441, 447.

OCCASIONED, (in a statute). 4 Rawle (Pa.) 459.

OCCASIONES.—Assarts.—*Spel. Gloss.*; *voc* Essartum. See **ASSART**.

Occultatio thesauri inventi fraudulosa (3 Inst. 133): The concealment of discovered treasure is fraudulent.

OCCUPANCY—OCCUPANT.—

§ 1. Occupancy is where a person takes possession of an ownerless thing.

§ 2. **Chattels.**—Occupancy, as a mode of acquiring title to personal property, is of comparatively little importance in modern law, being principally confined to the case of goods unclaimed or thrown away, (see **DERELICT**; **ESTRAYS**; **WAIFS**.) and game or animals *feræ naturæ* (*e. g.* fish in the sea or a river) when taken by the finder or pursuer. (2 Bl. Com. 402.) The doctrine has, however, served as the foundation for a theory of the origin of ownership, now somewhat discredited. See **Mark. El. Law** § 464 *et seq.* See **GAME**, § 4.

§ 3. **General, or common occupancy of land.**—As regards land, the doctrine of occupancy was formerly of some importance. If A. granted land to B. during the life of C., and B. died before C., then there was no one entitled to the land, because A. had parted with his right during C.'s life, and B.'s estate had determined with his own death; therefore, any one might enter on the land and retain possession during the remainder of C.'s life. A person so entering was called an "occupant," "because his title is by his first occupation," (Co. Litt. 41b.) or, more commonly, a "general occupant," because any one might enter in this manner. (As to general occupancy in copyholds, see **Elit. Copyh.** 40.) This doctrine of general or common occupancy was abolished by the Statute of Frauds, (Stat. 29 Car. II. c. 3, § 12.) under which, and subsequent statutes, (Stats. 14 Geo. II. c. 20, § 9; and 1 Vict. c. 26, §§ 3, 6.) a tenant *pur autre vie* may dispose of his interest by will, and in default of such disposition it forms part of his personal estate.

§ 4. **Special occupancy.**—If A. grants land to B. and his heirs during the life of C., and B. dies before C., B.'s heir may enter and hold possession, and in such case he is called a "special occupant," having a special right of occupation by the terms of the grant. (2 Bl. Com. 258; 1 Steph. Com. 418; Wms. Real Prop. 20.) Blackstone includes rights of water, air, &c., emblements, copyright, and patents among things which are acquired by occupancy. 2 Com. 402 *et seq.* See the respective titles. See **ESTATE TAIL**, § 9; **FREHOLD**, § 3.

§ 5. **In international law**, occupancy is regarded as the title to the ownership of newly-discovered countries; and also

(under the particular name of hostile capture), as the title to the ownership of newly-conquered countries.

OCCUPANCY, (defined). 3 Gr. (N. J.) Ch. 48; 3 Cal. (N. Y.) 175.

— (what constitutes). 110 Mass. 175; 25 Barb. (N. Y.) 54.

— (not synonymous with "possession"). 21 Ill. 178.

— (in a charter). 10 C. E. Gr. (N. J.) 218.

— (in a statute). 38 Ill. 263.

OCCUPANCY, TO FINISH SAID HOUSE READY FOR, (in an agreement). 119 Mass. 224, 227.

OCCUPANT, (defined). 3 Op. Att.-Gen. 126; 3 Nev. 485; 11 Abb. (N. Y.) Pr. 97, 101; 1 Oreg. 166; 1 Utah T. 129.

— (who is). 3 Op. Att.-Gen. 182; 36 Mich. 226.

— (who is not). 33 Me. 419.

— (not synonymous with "party in possession"). 3 Nev. 485.

— (of town site). 3 Minn. 448.

— (in a statute). 13 Metc. (Mass.) 172; 25 Barb. (N. Y.) 54; 15 Wend. (N. Y.) 348.

OCCUPANT, ACTUAL, (in act of congress). 12 Nev. 65, 70.

OCCUPANT OF THE LAND, (in a statute). 36 How. (N. Y.) Pr. 544.

Occupantis sunt derelicta: Things abandoned become the property of the first taker. *See* DERELICT.

OCCUPATILE.—That which has been left by the right owner, and is now possessed by another.

OCCUPATION—OCCUPIER.—**LATIN**: *occupatio*, from *capere*, to take or seize. In Roman law, *occupatio* signified "occupancy." 2 Just. Inst. 1, 12; Hunt. Rom. L. 109.

§ 1. In its usual sense, occupation is where a person exercises physical control over land. Thus, the lessee of a house is in occupation of it so long as he has the power of entering into and staying there at pleasure, and of excluding all other persons (or all except one or more specified persons) from the use of it. Occupation is, therefore, the same thing as actual possession. (*See* *Hadley v. Taylor*, L. R. 1 C. P. 53; *Robinson v. Briggs*, L. R. 6 Ex. 1.) Coke also speaks of the occupation of goods (Co. Litt. 172a), but this use of the word is not common. *See* POSSESSION; USE AND OCCUPATION.

§ 2. **Permissive**.—Permissive occupation is where the occupier has merely a license or permission from the person entitled to the occupation. *See* *Parker v. Leach*, L. R. 1 P. C. 812.

§ 3. **Ratable occupation**.—In the English law of rating, occupation signifies actual use

and enjoyment, as distinguished from mere possession. Thus, a freeholder is in the possession of the minerals beneath the surface of his land, and of a house which is to let, whether empty or in the custody of a caretaker, but he is not in occupation of them for the purpose of rating. To constitute a ratable occupation, it must be exclusive as well as beneficial; therefore, lodgers (*q. v.*), licensees (*supra*, § 2), and servants are not ratable occupiers. *Cast. Ra.* 26, 82; *Reg. v. Malden*, L. R. 4 Q. B. 326; *L. & N. W. Rail. Co. v. Buckmaster*, L. R. 10 Q. B. 70, 444; *Watkins v. Milton-next-Gravesend*, L. R. 3 Q. B. 350; *Cory v. Bristow*, 2 App. Cas. 262; *Hare v. Overseers of Putney*, 7 Q. B. D. 223.

§ 4. **Voting**.—In the law of parliamentary and municipal elections, the occupation of a dwelling-house, lands, or lodgings, is one kind of qualification, in England, for being registered as a voter. *See* Stats. 2 Will. IV. c. 45; 30 and 31 Vict. c. 102; 41 and 42 Vict. c. 26; *Durant v. Carter*, L. R. 9 C. P. 261; *Robinson v. Briggs*, L. R. 6 Ex. 1.

§ 5. **Occupatio bellica**.—In a technical sense, "occupation is a word of art, and signifieth a putting out of a man's freehold in time of warre, and it is all one with a disseisin in time of peace." (Co. Litt. 249b) Such an occupation, however, did not produce a descent cast as a disseisin formerly did. (Litt. § 412. *See* DESCENT CAST.) And in civilized warfare at the present day, occupation of an enemy's territory is only temporary, and does not interfere with the rights of private owners, even if the territory is permanently annexed by the conquerors. (Holtz. Encycl. i. 811.) As to movables, *see* CAPTURE; PRIZE.

OCCUPATION, (what is not). 59 Me. 287.
— (distinguished from "possession"). 19 Cal. 633.

— (equivalent to "possession"). 11 Abb. (N. Y.) Pr. 97; 1 El. & E. 533.

— (in a statute). 15 Serg. & R. (Pa.) 36.

OCCUPATION OF A, NOW IN TIME, (in a will). 1 Mau. & Sel. 299; 1 Rep. Leg. 290.

OCCUPATION OF LAND, (in bill of sale act). L. R. 6 Ex. 1.

OCCUPATIVE.—Possessed; used; employed.

OCCUPAVIT.—A writ that lay for him who was ejected from his freehold in time of war, as the writ of *novel disseisin* lay for one disseised in time of peace.

OCCUPIED, (in fire policy). 112 Mass. 422; 17 Am. Rep. 117.

— (in homestead exemption act). 36 Wis. 78.

— (within the meaning of a tax law). 18 Vr. (N. J.) 113.

OCCUPIED, (in a statute). 113 Mass. 518.
OCCUPIED AS A RESIDENCE, (construed). 79 Ill. 455

OCCUPIED BY ME, (in a will). 4 C. E. Gr. (N. J.) 471.

OCCUPIED BY THE PLAINTIFF, (in a search warrant). 41 Me. 254.

OCCUPIER.—See OCCUPATION.

OCCUPIER, (defined). 2 Saund. 7, n. (9).

—— (who is). 1 Pa. 71; Burr. 1064.

—— (synonymous with "inhabitant"). 3 T. R. 523.

—— (in act relative to nuisances). L. R. 7 Q. B. 418.

—— (in a statute). 2 Mod. 188.

OCCUPIER OF APARTMENTS, (who is). 1 Lutw. 199.

OCCUPIER OF REAL PROPERTY, (in a statute). 12 East 344.

OCCUPIERS OR INHABITANTS, (who are). Cowp. 79, 83.

OCCUPY, (synonymous with "possess"). 84 Pa. St. 514.

—— (in a deed). 4 T. R. 177, 181.

—— (in guaranty for rent). 12 R. I. 130.

—— (in a will). 1 Baldw. (U. S.) 454.

OCCUPY, ACTUALLY, (who does not). 1 Pick. (Mass.) 387.

OCCUPY LANDS, (a deed to, is a mere license). 4 Johns. (N. Y.) 418.

OCCUPY, OR CONTINUING TO OCCUPY, (in act exempting homesteads from sale). 18 Ill. 194; 21 Id. 178.

OCCUPYING, BY, (in an agreement). 4 Car. & P. 65.

OCHLERN.—In the old Scotch law, a name of dignity; a freeholder.—*Skene de Verb. Sign.*

OCHLOCRACY.—A form of government wherein the populace has the whole power and administration in its own hand; a democracy; mob rule.

OCTAVE.—In old English law, the eighth day inclusive after a feast; one of the return days of writs. 3 Bl. Com. 278.

OCTO TALES.—See **TALES.**

Oderunt peccare boni, virtutis amore; oderunt peccare mali, formidine pœne: Good men hate sin through love of virtue; bad men through fear of punishment.

ODHAL.—Complete property, as opposed to feudal tenure. The transposition of the syllables of *odhal* makes it *allodh*, and hence, according to Blackstone, arises the word *allod* or *allodial* (q. v.) *All-odh* is thus put in contradistinction to *fee-odh*. (2 Bl. Com. 45 n.)—*Moxley & W.*

ODIO ET ATIA.—See **DE ODIO ET ATIA.**

Odiosa et inhonesta non sunt in lege præsumentia; et in facto quod se habet ad bonum et malum, magis de bono quam de malo præsumentum est (Co. Litt. 78): Odious and dishonest things are not to be presumed in law; and in an act which partakes both of good and bad, the presumption should be more in favor of what is good than what is bad.

ECONOMICUS.—An executor.—*Cowell.*

ECONOMUS.—A manager or administrator.—*Calv. Lex.*

ECUMENICAL.—See **ECUMENICAL.**

OF, (a more general word than "at"). 3 Mau. & Sel. 171, 172.

—— (equivalent to "by"). 107 Mass. 355, 361.

—— (in a bond). 1 Paine (U. S.) 336.

—— (in a contract). 2 Bing. N. C. 608.

OF AND CONCERNING, (in a declaration). 16 East 58.

—— (in an indictment). 4 Mau. & Sel. 164, 169.

—— (in an information). Cowp. 672.

—— (in a statute). 4 Rawle (Pa.) 249.

OF AND CONCERNING THE MATTERS AFORESAID, (in a declaration). 3 Barn. & C. 113.

OF COUNSEL.—A phrase commonly applied in practice to the counsel employed by a party in a cause.

OF COURSE.—A step in an action or other proceeding is said to be of course when the court or its officers have no discretion to refuse it, provided the proper formalities have been observed. In this sense the issue of a writ or summons is a matter of course. (See **WRR.**) The term is most commonly applied to those orders which are obtained by petition, or *ex parte* application of course, e. g. an order appointing a guardian *ad litem* for an infant defendant or respondent, orders for leave to attend proceedings, (as to which, see **NOTICE OF DECREE**), and certain orders for amendment and revivor. An order of course improperly obtained may be set aside. Dan. Ch. Pr. 1435.

OF OR CONCERNING, (in a declaration in an action of slander). 2 Munf. (Va.) 193.

OF THE COUNTY, (in pleading, is equivalent to saying "an inhabitant of the county"). 3 Wend. (N. Y.) 329.

OFFENSE.—The word "offense" has no technical meaning in modern law, but it is commonly used to signify any public wrong, including, therefore, not only

crimes or indictable offenses, but also offenses punishable on summary conviction.

OFFENSE, (defined). 1 Dak. T. 110; 1 Gr. (N. J.) 314; 3 Wheel. Cr. Cas. 583; 2 Bulst. 299; 1 Chit. Gen. Pr. 14.

— (in the declaration of rights). 127 Mass. 550, 554.

OFFENSES AFORESAID, (in a statute). 4 Serg. & R. (Pa.) 129.

OFFENSIVE WEAPONS, (what are not). 5 Car. & P. 326; 1 Chit. Gen. Pr. 626; 1 Leach C. C. 342 n.

OFFER.—Every agreement in substance consists of an offer made by one party and its unconditional acceptance by the other. An acceptance, with conditions or new terms added, is in effect a new offer, and does not operate as an acceptance of the original offer. An offer may be withdrawn at any time before it has been unconditionally accepted, and if the person to whom an offer is made refuses it, or neglects to accept it within a reasonable time, it is deemed to be at an end, and he cannot afterwards revive it by purporting to accept it. Chit. Cont.; Poll. Cont., *passim*. See **ACCEPTANCE**; **AGREEMENT**; **LETTER**.

OFFER, (defined). 3 Johns. (N. Y.) Cas. 198.

OFFER AND PROPOSE, (in an indictment). 1 Pa. Leg. Gaz. 455.

OFFER TO TRANSPORT, (in a statute). 1 Whart. (Pa.) 448.

OFFERING, (distinguished from "promising"). 4 Harr. (Del.) 559.

OFFERINGS.—Personal tithes, payable by custom to the parson or vicar of a parish, either occasionally, as at sacraments, marriages, christenings, churching of women, burials, &c.; or at constant times, as at Easter, Christmas, &c. 2 and 3 Edw. IV. ca. 13, 20, 21.

OFFERTORIUM.—The offerings of the faithful, or the place where they are made or kept; the service at the time of communion.

OFF-GOING CROP.—See **AWAY-GOING CROP**; **EMBLEMMENTS**, § 1.

OFFICE.—

§ 1. In general—Public, and private.

—In the usual sense of the word, an office is the right and duty to exercise an employment. Thus, we speak of the office of a trustee, executor, guardian, director, sheriff, judge, &c. Offices are either public or private, a public office being one which entitles a man to act in the affairs

of others without their appointment or permission. (2 Steph. Com. 620; Co. Litt. 233 a.) Public offices are granted either for a term of years, for life or during good behavior (*dum bene se gesserit*), or during the pleasure of the appointor (*durante bene placito*), and some offices in England are capable of being granted to a man and his heirs (in which case they are incorporeal hereditaments), or of being entailed, in which case they are also tenements. Co. Litt. 20 a; 2 Bl. Com. 86.

§ 2. **Of trust—Ministerial**.—Public offices are either offices of trust, which cannot be performed by deputy (including offices of judges, justices of the peace and other judicial offices), or ministerial offices, which may be performed by deputy. 2 Steph. Com. 621. As to offices of honor, see Co. Litt. 165 a; Stats. 5 and 6 Edw. VI. c. 16, and 49 Geo. III. c. 126, prohibit the buying and selling of public offices. See **OATH**, § 3.

As to private offices, see **EXECUTOR**; **GUARDIAN**; **TRUSTEE**; and the other titles dealing with them.

§ 3. **Inquest of office**.—"Office" is frequently used in the old books as an abbreviation for "inquest of office" (*q. v.*) When the jury on inquest of office had found the facts to be inquired into, and the verdict or inquest had been returned, the office was said to be found and returned. There are two sorts of offices; the one, called the "office of intituling," vests the estate and possession of the land in the sovereign, where he had only right or title before. The other, called the "office of instruction," is where the estate is already in the sovereign, but the particularity of the land does not appear of record. Tidd 1057, n. (e); 10 Co. 115 a; Gilb. Exch. 109.

OFFICE, (defined). 6 Wall. (U. S.) 385; 21 Ill. 65; 12 Ind. 569; 23 Id. 449; 36 Miss. 273; 37 N. Y. 518; 71 Id. 238, 243; 83 Id. 376; 42 Super. (N. Y.) Ct. 481; 2 Bl. Com. c. 3, 36.

— (what is). 28 Cal. 382; 8 Blackf. (Ind.) 329; 22 Barb. (N. Y.) 595; 1 Hopk. (N. Y.) Ch. 6; 29 Ohio St. 347; Carth. 478.

— (what is not). 7 Port. (Ala.) 293, 393; 6 Cush. (Mass.) 181; 20 Johns. (N. Y.) 492; 52 N. Y. 478; 17 Serg. & R. (Pa.) 220; 1 Munf. (Va.) 483; 1 Barn. & C. 237.

— (in constitution of Maine). 3 Me. 481.

OFFICE, (in constitution of New York). 2 Cow. (N. Y.) 13.

— (in constitution of Pennsylvania). 3 Serg. & R. (Pa.) 145.

— (is not property). 1 Daly (N. Y.) 219; 37 N. Y. 518.

— (in a tenement). Burr. 1289.

— (appointing to, distinguished from "commissioning"). 1 Cranch (U. S.) 156.

— (covenant to procure an appointment to). 2 Car. & P. 1.

— (how terminated). 9 Wend. (N. Y.) 258.

— (under government). 13 Otto (U. S.) 8.

— (in articles of association). L. R. 3 C. P. 484.

— (in a statute). 6 Cush. (Mass.) 181; 46 N. Y. 375, 381; L. R. 3 Ex. 137; L. R. 9 Q. B. 148.

OFFICE AND EMPLOYMENT, (in a statute). 1 Const. (S. C.) 58, 59.

OFFICE BOOK.—Any book for public records kept under authority of the State, in public offices not connected with the courts.

OFFICE, CIVIL, (what is). 41 Mo. 29.

— (what is not). 3 Harr. (Del.) 294.

OFFICE COPY.—See COPY, § 1.

OFFICE DURING PLEASURE, (the position of paymaster of exchequer is). 9 Bing. 692; 3 Tyrw. 509.

OFFICE-FOUND.—See INQUEST OF OFFICE; OFFICE, § 3.

OFFICE GRANT.—A conveyance made by a public officer in certain cases, where the owner of the land conveyed is either unwilling or unable to execute the requisite deeds to pass title.

OFFICE HOURS.—That portion of the day during which public offices should be open for the transaction of business.

OFFICE, IN HIS, (in a statute). 3 Ct. of Cl. 260.

OFFICE, LUCRATIVE, (what is). 10 Cal. 38; 19 Ind. 351.

OFFICE OF HONOR, (what is). 17 Ill. 191.

OFFICE OF PROFIT, (that of comptroller of the State is). 10 Cal. 38.

— (in constitution of Pennsylvania). 1 Serg. & R. (Pa.) 9.

OFFICE OF PROFIT AND TRUST, (what is). 4 Ind. 1.

OFFICE OF PUBLIC TRUST, (in State constitution). 52 N. Y. 478; 11 Am. Rep. 734.

OFFICE OF TRUST, (commissioner of the United States Centennial Commission is). 11 R. I. 638.

OFFICE OF THE JUDGE.—In ecclesiastical law, "the office of the judge is pro-

moted" when criminal proceedings are taken. The meaning of the expression is, that inasmuch as all spiritual criminal jurisdiction is in the hands of the bishop or ordinary (*judex ordinarius*), his office or function is set in motion whenever such proceedings are instituted. Phillim. Ecc. L. 1087.

OFFICE, OR FRANCHISE, (the position of deputy adjutant general is). 2 Gr. (N. J.) 84.

OFFICE, OR PLACE OF PROFIT IN THE GOVERNMENT, (in a statute). Burr. 1004.

OFFICE, PUBLIC, (in State constitution). 71 N. Y. 238, 243.

OFFICER.—The incumbent of an office; one who is lawfully invested with an office.

OFFICER, (defined). 45 Ill. 397; 15 Mich. 366; 40 Id. 503; Carth. 478.

— (who is). Baldw. (U. S.) 234; 20 Wall. (U. S.) 179; 22 Id. 492; 10 Ct. of Cl. 426; 8 Cal. 39; 10 Gray (Mass.) 173; Hopk. (N. Y.) 6; 26 Ohio St. 196; 5 Rawle (Pa.) 191, 203; 9 Watts (Pa.) 416; 2 Tex. App. 458.

— (who is not). Brock. (U. S.) 447, 481; 41 Ala. 399; 28 Cal. 603; 4 Harr. (Del.) 154; 45 Ill. 397; 35 Iowa 561; 4 La. Ann. 307; 25 Id. 138; 33 Miss. 508; 1 Nev. 130; 2 Keyes (N. Y.) 192; 42 Superior (N. Y.) 481; Phill. (N. C.) L. 76; 21 Pa. St. 525; 9 Phil. (Pa.) 556; 3 Pittsb. (Pa.) 527; 27 Eng. L. & Eq. 190.

— (in State constitution). 40 Mich. 503; Edm. (N. Y.) Sel. Cas. 498.

— (in a statute). 2 Ben. (U. S.) 303, 316; 3 Cranch (U. S.) 336; 4 J. J. Marsh. (Ky.) 192; L. R. 4 Q. B. 649; 5 Mod. 431; 4 T. R. 490, 492.

OFFICER DE FACTO, or DE JURE.—See DE FACTO; DE JURE.

OFFICER, DE FACTO, (defined). 33 Gratt. (Va.) 514.

— (who is). 21 Ohio St. 610, 618; 19 Am. Dec. 61, 63 n., 66 n.

OFFICER, MILITIA, (in a statute). 5 Wheat. (U. S.) 46.

OFFICER, PUBLIC, (defined). 7 How. (N. Y.) Pr. 248.

— (what constitutes). 33 Cin. 332; 7 Mete. (Mass.) 152; 2 N. H. 246; 2 Hill (N. Y.) 196; 7 How. (N. Y.) Pr. 248; 11 Ill. 240; 22 Id. 368; 74 Pa. St. 124; Carth. 479.

— (who is not). 20 Johns. (N. Y.) 494; 50 How. (N. Y.) Pr. 353; 70 N. C. 93; 21 Ohio St. 14; 8 Am. Rep. 24; 32 Wis. 124.

— (in a statute). 2 Hill (N. Y.) 196.

— (official character of, how proved). 9 Wend. (N. Y.) 18; 13 Id. 494.

OFFICER, PUBLIC, CIVIL, (a clergyman in the celebration of marriage is). 4 Conn. 209.

OFFICER OF ELECTION, (who is not). 2 Ben. (U. S.) 303, 316; 2 Dill. (U. S.) 219.

OFFICER OF THE COMMONWEALTH, (in a statute). 3 Pittsb. (Pa.) 527.

OFFICER OF THE LAW, (in a statute). 12 R. I. 478.

OFFICER OF THE UNITED STATES, (who is). 3 Blatchf. (U. S.) 425; Gilp. (U. S.) 399.

— (who is not). 1 Curt. (U. S.) 15.

OFFICER, SPIRITUAL, (a parish clerk is). 2 Ld. Raym. 1507.

OFFICERS, (in a statute). 3 Moo. & S. 251.

OFFICERS AND SEAMAN, (includes whom). 8 Op. Att.-Gen. 28.

OFFICERS, PUBLIC, (in a statute). 4 Yeates (Pa.) 412.

OFFICERS OF JUSTICE.—

A general name applicable to all degrees of persons concerned in the administration of the law, but it is commonly confined to the lower degrees of such persons, and almost exclusively to those who execute the processes of the courts, *e. g.* writs of *fi. fa.*, of arrest, attachment, sequestration, and the like.

OFFICERS, PARISH AND WARD, (in a statute). 7 East 182.

Officia judicialia non concedantur antequam vacent (11 Co. 4): Judicial offices should not be granted before they are vacant.

Officia magistratus non debent esse venalia (Co. Litt. 234): The offices of magistrate ought not to be sold.

OFFICIAL.—Pertaining to a public charge or office. In the civil law, he is the minister of, or attendant upon, a magistrate. In the canon law, he is the person to whom a bishop commits the charge of his spiritual jurisdiction; there is one in every diocese, called *officialis principalis*, *i. e.* chancellor; (*see* OFFICIAL PRINCIPAL;) the rest, if there are more, are *officiales foranei*, *i. e.* commissaries. In modern English statutes, he is the person whom the archdeacon appoints as his substitute. Wood Inst. 30, 505. *See* DIOCESAN COURTS.

OFFICIAL ASSIGNEE—OFFICIAL LIQUIDATOR.—*See* ASSIGNEE, p. 87, *n.*; LIQUIDATOR, § 3.

OFFICIAL LIQUIDATOR, (defined). 3 Steph. Com. 24.

OFFICIAL LOG-BOOK.—A log-book in a certain form, and containing certain specified entries required by 17 and 18 Vict. c. 104, §§ 280–282, to be kept by all British merchant ships, except those exclusively engaged in the coasting trade. *See* LOG-BOOK.

OFFICIAL MANAGERS.—Persons formerly appointed, under English statutes now repealed, to superintend the winding up of in-

solvent companies under the control of the Court of Chancery.—*Wharton*.

OFFICIAL MISCONDUCT, (in a statute). 9 Tex. App. 212.

OFFICIAL OATH.—By the 31 and 32 Vict. c. 72, a form of "official oath" is prescribed, and by § 5 it is enacted that "the oath of allegiance and official oath shall be tendered to and taken by each of the officers named in the first part of the schedule annexed hereto as soon as may be after his acceptance of office by the officer, and in the manner in that behalf mentioned in the said first part of the said schedule." *See* OATH, § 3. *See, also*, the 34 and 35 Vict. c. 48.

OFFICIAL PAPERS, (what are). 6 Serg. & R. (Pa.) 215, 221; 4 Watts (Pa.) 132.

— (what are not). 2 Watts (Pa.) 338.

OFFICIAL PRINCIPAL.—An ecclesiastical officer whose duty it is to hear causes between party and party as the delegate of the bishop or archbishop by whom he is appointed. He generally also holds the office of vicar general (*q. v.*) and (if appointed by a bishop) that of chancellor (*q. v.*, § 5). The official principal of the province of Canterbury is called the "dean of arches" (*q. v.* and *see* COURT OF ARCHES). Phillim. Ecc. L. 1203 *et seq.*

OFFICIAL REFEREE.—*See* REFEREE.

OFFICIAL SIGNATURE, (what is). 9 Pet. (U. S.) 675.

OFFICIAL SOLICITOR TO THE COURT OF CHANCERY.—An officer in England, whose functions are to protect the suitors' fund (*q. v.*), and to administer, under the direction of the court, so much of it as now comes under the spending power of the court. He acts for persons suing or defending in *forma pauperis*, when so directed by the judge, and for those who, through ignorance or forgetfulness, have been guilty of contempt of court by not obeying process. He also acts generally as solicitor in all cases in which the Chancery Division requires such services. (Second Rep. Legal Dep. Comm. (1874) 40.) The office is transferred to the High Court by the Judicature Acts, (Judicature Act, 1873, § 77,) but no alteration in its name appears to have been made.

OFFICIAL TRUSTEE OF CHARITY LANDS.—The secretary of the English charity commissioners. He is a corporation sole for the purpose of taking and holding real property and leaseholds upon trust for an endowed charity in cases where it appears to the court desirable to vest them in him. He is a bare trustee, the possession and management of the land remaining in the persons acting in the administration of the charity. Stats. 16 and 17 Vict. c. 137, § 47 *et seq.*; 18 and 19 Vict. c. 124, § 15.

OFFICIAL TRUSTEES OF CHARITABLE FUNDS.—Persons in whom the money, stocks or investments of any endowed

charity may be vested, in England, (either voluntarily or by order of the court,) for the purpose of security or convenient administration. They are appointed by the lord chancellor, jointly with the secretary to the charity commissioners, and form a corporation. Stats. 16 and 17 Vict. c. 137, § 51 *et seq.*; 18 and 19 Vict. c. 124, § 17.

OFFICIAL USE.—An active use before the Statute of Uses, which imposed some duty on the legal owner or feoffee to uses, as a conveyance to A with directions for him to sell the estate and distribute the proceeds amongst B, C and D. To enable A. to perform this duty, he had the legal possession of the estate to be sold.—*Wharton*.

OFFICIALTY.—The court or jurisdiction of which an official is head.

OFFICIARIIS NON FACIENDIS VEL AMOVENDIS.—A writ addressed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he has, until inquiry is made of his manners, &c.—*Reg. Orig.* 126.

OFFICIUM VIRTUTIS, (distinguished from "colore officii"). 15 Johns. (N. Y.) 267.

— (when is an act done). 5 Wend. (N. Y.) 265.

OFFICINA JUSTITIÆ.—A department of the common law jurisdiction of Chancery, out of which original writs issued.

OFFICIO, OATH EX.—An oath formerly administered to persons by which they were compelled to confess, accuse, or purge themselves of certain criminal or quasi-criminal (*i. e.* heretical) charges. This oath was made use of in the spiritual courts even in matters of civil right. It was abolished with the High Commission Court by Stat. 16 Car. I. c. 11.—*Brown*.

OFFICIOUS WILL.—A testament by which a testator leaves his property to his family. Sand. Inst. (5 edit.) 207.

Officium nemini debet esse damnosum: An office ought to be injurious to no one.

OFTEN IF NEED BE, AND MORE, (in a statute). Str. 1263.

OHIO, (in the surveys of land, means *primò facie* the "Ohio river"). 2 Ind. 274.

OIL CLOTH FOUNDATION, (as synonymous with "floor-cloth canvas"). 1 Ohio (U. S.) 362.

OLD, (in a statute). 67 N. Y. 59.

OLD NATURA BREVIIUM.—An old book containing an account of the writs in use in the time of Edward III. It is usually cited *O. N. B.*, or *Vet. N. B.* Fitzherbert made it the model of his own treatise on the same subject. 3 Reeves Hist. Eng. Law 151.

OLD STYLE.—See **NEW STYLE**.

OLD TENURES.—A treatise, so called to distinguish it from Littleton's book on the same subject, which gives an account of the various tenures by which land was holden, the nature of estates, and some other incidents to landed property in the reign of Edward III. It is a very scanty tract, but has the merit of having led the way to Littleton's famous work. 3 Reeves Hist. Eng. Law 151.

OLDEST SON, (in a will). 106 Mass. 25, 28.

OLERON.—An island lying in the bay of Aquitaine, at the mouth of the river Charente, formerly in the possession of England. The inhabitants of Oleron have been able mariners for seven or eight hundred years past. They are said to have drawn up the laws of the navy, still called the "Laws of Oleron." According to the French writers, these maritime laws were digested as the *Règle des Jugemens d'Oleron*, by direction of Queen Eleanor, wife of Henry II. as Duchess of Guienne, and enlarged and improved by her son, Richard I.—Selden (*de Dom. Mar.* c. xiv.) maintains that they were compiled and promulgated by Richard I. as king of England. Writers, as Mons. Boucher, of Paris, and the English Luders, consider the whole account fallacious. The former calls the story of our Richard I. and Queen Eleanor, *une chimère des plus invraisemblables*. *Monthly Review*, Dec., 1811. The Laws of Oleron were to a great extent the foundation of the maritime laws of most states of Europe.—*Wharton*.

OLIGARCHY.—A form of government wherein the administration of affairs is lodged in the hands of a few persons.

OLOGRAPH.—An instrument (*e. g.* a will) wholly written by the person from whom it emanates. See **HOLOGRAPH**.

OLYMPIAD.—A Grecian epoch; the space of four years.

Omissio eorum quæ tacite insunt nihil operatur (2 Buls. 131): The omission of those things which are silently understood is of no consequence.

OMISSION TO APPOINT, (in probate act). 15 Minn. 159.

OMISSION TO NAME THE REAL OWNER, (in a statute). 4 Vr. (N. J.) 39.

OMITTANCE.—Forbearance.

Omne actum ab intentione agentis est judicandum; a voluntate procedit causa vitii atque virtutis (Jur. Civ.) Every act is to be estimated by the intention of the doer; the cause of vice and virtue proceeds from the will.

Omne crimen ebrietas et incendit et detegit (Co. Litt. 247): Drunkenness both kindles and uncovers every crime.

Omne jus aut consensus fecit, aut necessitas constituit aut firmavit consuetudo (D. 1, 3, 40): Every right is either made by consent, or is constituted by necessity, or is established by custom.

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius (Co. Litt. 335): Everything more worthy draws to it the less worthy, although the less worthy be the more ancient.

Omne magnum exemplum habet aliquid ex iniquo, quod publica utilitate compensatur (Hob. 279): Every great example has some portion of evil, which is compensated by the public utility.

Omne majus continet in se minus, minus in se complectitur (Jenk. Cent. 208): The greater contains or embraces the less.

Thus, a tender by a debtor to his creditor of more money than is actually owing is perfectly good for what actually is due.

Omne majus dignum continet in se minus dignum (Co. Litt. 43): The more worthy contains in itself the less worthy.

Omne quod solo inædificatur solo cedit (D. 47, 3, 1): Everything which is built upon the soil belongs to the soil.

Omne sacramentum debet esse de certa scientia (4 Inst. 279): Every oath ought to be of certain knowledge.

Omne testamentum morte consummatum est (3 Co. 29): Every will is completed by death.

Omnes licentiam habent his, quæ pro se introducta sunt, renunciare (Broom Max. (5 edit.) 699): Every one has the right to renounce those things which have been granted for his own benefit.

Omnes sorores sunt quasi unus hæres de una hæreditate (Co. Litt. 67): All sisters are, as it were, one heir to one inheritance. See *COPARCENER*.

Omni exceptione majus (4 Inst. 262): Above all exception.

Omnia delicta in aperto leviora sunt (8 Co. 127): All crimes done openly are lighter.

Omnia præsumuntur contra spoliatores: Everything is presumed against a wrong-doer.

A maxim signifying "that if a man by his own tortious act withhold the evidence by which the nature of his case would be manifested, every presumption to his disadvantage will be adopted. Thus, if a man withholds an agreement under which he is chargeable, it is presumed to have been properly stamped" (1 Sm. Lead. Cas. 387); so, where A. detained some jewels of unknown value belonging to B., and B. brought an action

to recover damages for the detention, their value was calculated as being that of the finest jewels of the same size. *Armory v. Delamirie*, 1 Str. 504.

OMNIA PRÆSUMUNTUR CONTRA SPOLIATOREM, (applied). 87 Ill. 342; 6 Stew. (N. J.) 257.

Omnia præsumuntur legitime facta donec probetur in contrarium (Co. Litt. 232): All things are presumed legitimately done, until it be proved contrariwise.

Omnia præsumuntur rite et solemniter esse acta donec probetur in contrarium (Co. Litt. 232): All things are presumed to have been rightly and duly performed until it is proved to the contrary.

Thus, where there is a proper attestation clause to a will which appears on the face of it to be duly executed, the court assumes that the Wills Act has been complied with, even although the witness may forget the circumstances. See *Vinnicombe v. Butler*, 34 L. J. (P. & M.) 18.

Omnia præsumuntur solemniter esse acta (Co. Litt. 6): All things are presumed to have been done rightly.

Omnia quæ jure contrahuntur contrario jure pereunt (D. 50, 17, 100): All things which are contracted by law perish by a contrary law.

Omnia quæ sunt uxoris sunt ipsius viri; non habet uxor potestatem sui, sed vir (Co. Litt. 112): All things which belong to the wife belong to the husband; the wife has not power over herself, but the husband. But see *HUSBAND AND WIFE*.

Omnia rite acta præsumuntur (Broom Max. (5 edit.) 944): All things are presumed to have been rightly done.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum (Co. Litt. 226): Every conclusion of a good and true judgment arises from good and true premises, and the words of the jury.

Omnis consensus tollit errorem (2 Inst. 123): Every assent removes error.

Omnis definitio in jure civili periculosa est, parum est enim ut non subverti possit (D. 50, 17, 202): All definition in the civil law is hazardous, for there is little that cannot be subverted.

Omnis exceptio est ipsa quoque regula: Every exception is itself also a rule.

Omnis innovatio plus novitate perturbat quam utilitate prodest (2 Bulst. 338): Every innovation occasions more harm by its novelty than benefit by its utility.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut

omnes contrarietates amoveantur (Jenk. Cent. 96): Every interpretation, if it can be done, is to be so made in instruments, that all contradictions may be removed.

Omnis nova constitutio futuris formam imponere debet, non præteritis: Every new enactment should lay down a rule for the future, not for the past.

Omnis nova constitutio futuris temporibus formam imponere debet, non præteritis (2 Inst. 95): Every new enactment should affect future, not past times.

Omnis privatio præsupponit habitum (Co. Litt. 339a): Every privation presupposes former enjoyment.

Omnis querela et omnis actio injuriarum limita est infra certa tempora (Co. Litt. 114b). Every plaint and every action for injuries is limited within certain times.

Omnis ratihabitio retrotrahitur et mandato priori æquiparatur: Every ratification relates back and is equivalent to a prior authority. Chit. Cont. 196.

Therefore, if A. professes to enter into a contract on my behalf without my authority, and I afterwards ratify it, my ratification relates back, so as to have the same effect as if I had authorized A. to enter into the contract. See **RATIFICATION**.

OMNIUM.—The aggregate of certain portions of different stocks in the public funds.

OMNIUM, (defined). 2 Esp. 631.

Omnium contributione sarcitur quod pro omnibus datum est (4 Bing. 121): That which is given for all is recompensed by the contribution of all.

A principle of the law of general average.

ON, (when means "near to"). 45 Mo. 349.
 — (as synonymous with "for"). 2 Brod. & B. 473, 587.

— (in an indictment). 4 Rawle (Pa.) 464.

— (in a statute). 3 P. D. 47, 50; Wilberf. Stat. L. 139.

ON A PASSAGE, (in marine policy). 103 Mass. 238; 4 Am. Rep. 543.

— (when a ship is). 1 Bouv. Inst. 486.
ON A PUBLIC HIGHWAY, (in act defining misdemeanors). 64 Ind. 553.

ON A STREAM, (in a deed). 3 Sumn. (U. S.) 170.

ON ACCOUNT OF WHOM IT MAY CONCERN.—See **FOR WHOM IT MAY CONCERN**.

ON ACCOUNT OF WHOM IT MAY CONCERN, (in a policy of insurance). 3 Keyes (N. Y.) 17.

ON ALL OR EITHER, (in fire policy). 112 Mass. 136; 17 Am. Rep. 72.

ON ARRIVAL, (in a contract for the sale of goods). 2 Campb. 320.

ON BOARD, (in marine policy). 16 East 240.
 — (goods on ship, seller not bound to deliver). 3 Campb. 272.

— (goods shipped on vessel and afterward unloaded and re-loaded). 16 East 177.

ON CALL, OR AT ANY TIME CALLED FOR, (equivalent to "demanded," or "on demand"). 22 Gratt. (Va.) 609.

ON CONDITION, (in an agreement). 8 Barn. & C. 308.

ON DEMAND, (in a mortgage). 123 Mass. 520.

— (in a promissory note). 6 Dowl. & Ry 379.

ON DUTY, (in an insurance policy). 1 Cinc. (O.) 410.

ON EACH SIDE OF SAID LINE, (in land grant to railroad). 24 Minn. 517, 576.

ON FILE, (when construed "deposited"). 17 Minn. 95.

ON HAND, ALL THE MONEY, (in a will). 5 Phil. (Pa.) 214.

ON MY SIDE, RELATIONS, (in a will). 1 Taunt. 263, 270.

ON OR ABOUT.—A phrase used in affidavits and other instruments in reciting the date of an occurrence or conveyance, to avoid the injurious consequences of possible error in a more precise recital.

ON OR BEFORE, (in a bond). 1 W. Bl. 210.
 — (in a covenant). 1 East 619; 2 Saund. 48 n.

— (in a policy of marine insurance). 4 Campb. 111.

— (in a promissory note). 31 Mich. 421; 18 Am. Rep. 197.

— (in a return of surveyors to lay out a road). South. (N. J.) 291, 292.

— (in a statute). 21 Barb. (N. Y.) 630; 6 Wend. (N. Y.) 486.

— (in a stipulation). 6 J. J. Marsh. (Ky.) 156.

ON OR BEFORE THE THAT, (in a statute). 2 Whart. (Pa.) 159.

ON PAYMENT OF COSTS, (in a judgment, with leave to plead). 6 Cow. (N. Y.) 582.

ON SHORE, (equivalent to "on land"). 1 Bos. & P. 187, 189.

ON THE ROAD, (in a deed). 9 Gray (Mass.) 37, 38.

ON THE STOCKS, A BARK, (in an insurance policy). 11 N. Y. 532.

ON TRIAL, (in a statute). 121 Mass. 31, 32.

ON WATER, EMPLOYED, (in a contract). 3 Jones (N. C.) L. 1.

ONCE A MORTGAGE ALWAYS A MORTGAGE.—This phrase means that an indenture which is intended in the first instance to operate as a deed of mortgage only, and not as a purchase deed, cannot by any clause or agreement therein be made to operate as a purchase or otherwise than as a mortgage upon any specified event.—*Brown*.

ONCE A WEEK, (in a statute). 4 Pet. (U. S.) 361.

ONCE A WEEK DURING THREE SUCCESSIVE WEEKS, (in a statute). 2 Miles (Pa.) 150, 151.

ONCE IN JEOPARDY.—*See* AUTREFOIS ACQUIT; AUTREFOIS CONVICT; JEOPARDY.

ONCE IN SIX MONTHS, (in a statute). 1 Taney (U. S.) 148.

ONCUNNE.—Accused.—*Du Cange*.

ONE DAY AFTER DATE, (in a promissory note). 2 Pa. St. 495.

ONE FOOT HIGH, LESS THAN, (in an agreement). 2 Zab. (N. J.) 165.

ONE-HALF, (as used in deed, construed as "undivided half"). 2 Minn. 214.

ONE HUNDRED THOUSAND POUNDS CLAUSE.—A precautionary stipulation inserted in a deed making a good tenant to the *præcipe* in a common recovery. *See* 1 Pres. Conv. 110.

ONE OF THE PRINTERS, (in a statute). 16 Serg. & R. (Pa.) 359.

ONE OF WHOM SHALL BE ON DUTY AT ALL TIMES, (in a policy of insurance). 1 Cinc. (O.) 410.

ONE PAIR OF BOOTS, (in indictment for stealing). 3 Harr. (Del.) 559.

ONE PART OF HIS FARM TO THE OTHER ALONG THE ROAD, (in turnpike act). 4 Yeates (Pa.) 416.

ONE-THIRD NEW FOR OLD.—*See* NEW FOR OLD.

ONE THOUSAND, (defined). 3 Barn. & Ad. 28.

ONE THOUSAND DOLLARS, (bequest of). 9 Vt. 41.

ONERANDO PRO RATA PORTIONIS.—*See* DE ONERANDO, &c.

ONERARI NON DEBET.—He ought not to be burdened. A form of commencement of a pleading, substituted in some few cases for *actionem non*. *But see* 1 Saund. 290, n. (b).

ONERATIO.—A lading; a cargo.

ONERATUR NISI.—*See* O. Nt.

ONERIS FERENDI.—Of bearing a burden. A civil law servitude, compelling the wall or pillar of one house to sustain the weight of the neighboring house.

ONEROUS.—A contract, lease, share or other right, is said to be "onerous" when the obligations attaching to it counterbalance or exceed the advantage to be derived from it, either absolutely or with reference to the particular possessor.

As to disclaimer of onerous property by a trustee in bankruptcy, *see* DISCLAIMER, § 3.

ONEROUS CAUSE.—In the Scotch law, a good and legal consideration.

ONEROUS CONTRACT.—In the civil law, a contract entered into for a consideration given or promised, however small. (La. Civ. Code, Art. 1767.)—*Bowvier*.

ONEROUS DEED.—In the Scotch law, a deed given for a valuable consideration.

ONEROUS GIFT.—A gift made subject to certain charges imposed by the donor on the donee.

ONEROUS TITLE, (what is). 13 Cal. 471.

ONLY, (in a reservation in a lease). 22 Pick. (Mass.) 518, 520.

ONLY FOR HIS LIFE, (in a will). Burr. 52; Fortes. 149.

ONLY, FOR LIFE, (in a will). 2 Str. 731.

ONOMASTIC.—A term applied to the signature of an instrument, the body of which is in a different handwriting from that of the signature. Best Ev. 257, § 210.

ONUS.—(1) A burden, or load; a weight. (2) The lading or cargo of a ship. (3) A charge; an incumbrance.

ONUS EPISCOPALE.—Ancient customary payments from the clergy to their diocesan bishop, of synodals, pentecostals, &c.

ONUS IMPORTANDI.—The charge of importing merchandise, mentioned in 12 Car. II. c. 28.

ONUS PROBANDI.—*See* BURDEN OF PROOF.

ONUS PROBANDI, (defined). 1 Houst. (Del.) 44.

OPE CONSILIO.—By aid and counsel. A civil law term applied to accessories, similar in import to the "aiding and abetting" of the common law. Often written *ope et consilio*. (Inst. 4, 1, 11, 12.)—*Burrill*.

OPEN.—

§ 1. Apparent; manifest; not concealed. Also, in session, as a court is open; and to begin, as to open a cause. Also, to retract or vacate conditionally, as to open a judgment.

§ 2. At trial of action.—The trial or hearing of an action at *Nisi Prius*, in England, is commenced by the junior counsel for the plaintiff "opening the pleadings," *i. e.* stating shortly the substance of them to the jury, after which the senior counsel for the plaintiff addresses the jury on the

whole case. (Chit. Gen. Pr. 383.) In the Chancery Division, the trial or hearing of an action commences with the speech of the plaintiff's senior counsel, which is called the "opening." This latter course is the one generally pursued in American practice, where frequently the plaintiff has only one counsel, who is generally his attorney also. See **REPLY**.

§ 3. **Opening biddings**.—Formerly where an estate had been sold under the order of the English Court of Chancery, the court was in the habit of "opening the biddings," *i. e.* of allowing a person to offer a larger price than the estate was originally sold for, and of directing a resale accordingly. But this practice has been abolished, except in the case of fraud or improper management of the sale. Stat. 30 and 31 Vict. c. 48; Wms. Real Prop. 170; Dan. Ch. Pr. 1183.

OPEN ACCOUNT.—See **ACCOUNT**, § 5.

OPEN ACCOUNT, (defined). 1 Ala. 62; 6 Id. 438; 1 Ga. 275; 14 Id. 379.

—(is used in contradistinction to "stated account"). 47 Tex. 13.

—(in act of March 5th, 1852, § 2). 13 La. Ann. 160.

OPEN ACCOUNTS, (in a statute). 21 La. Ann. 406; 4 Hen. & M. (Va.) 266.

OPEN AND EXTEND STREETS, (in a statute). 11 U. E. Gr. (N. J.) 248.

OPEN AND KEEP IN REPAIR, (in an authority to road commissioners). 20 How. (U. S.) 135; 1 Serg. & R. (Pa.) 487.

OPEN AND NOTORIOUS INSOLVENCY, (what is). 8 Blackf. (Ind.) 304.

OPEN COURT.—A court which is in session for the transaction of all judicial business, and to which all orderly and well-behaved persons have free access as spectators.

OPEN COURT, (defined). 45 Iowa 501, 503.

OPEN COURT, AT THE TRIAL IN, (in a statute). 2 Barn. & C. 580, 582.

OPEN ENTRY, (defined). 100 Mass. 108.

OPEN FIELDS, or MEADOWS.—In English law, fields which are undivided, but belong to separate owners; the part of each owner is marked off by boundaries until the crop has been carried, when the pasture is shared promiscuously by the joint herd of all the owners. Ekt. Com. 31. See **DOLM**, § 1; **LOT**, § 2.

OPEN GROSS LEWDNESS, (in an indictment). 1 Mass. 8.

OPEN LAW.—The making or waging of law. Mag. Char. c. 21.

OPEN LEWDNESS, (what constitutes). 18 Vt. 574.

OPEN POLICY.—One in which the value of the ship or goods insured is not fixed by the policy, but left to be ascertained in case of loss.

OPEN THEFT.—A theft that is manifest. Leg. Hen. 1 c. 13.

OPENED AND DEDICATED TO THE PUBLIC USE, (in a statute). 102 Mass. 489.

OPENED AND WORKED, (in a statute). 70 N. Y. 430.

OPENING A COMMISSION.—Entering upon the duties under a commission, or commencing to act under it. Thus, the judges of assize and *Nisi Prius* derive their authority to act under and by virtue of commissions directed to them for that purpose; and, when they commence acting under the powers so committed to them, they are said to open the commissions, and the day on which they so commence their proceedings is thence termed the "commission day of the assizes."—*Brown*.

OPENING A JUDGMENT.—This takes place where a judgment is so far annulled, by act of the court, that it cannot be enforced, although it still retains its binding operation as a lien upon the real estate of the defendant. It is done when some one having an interest makes affidavit to facts which, if true, would render the enforcement of the judgment inequitable.

OPENING A RULE.—The act of restoring or recalling a rule, which has been made absolute, to its conditional state, as a rule *nisi*, so as to re-admit of cause being shown against the rule. Thus, when a rule to show cause has been made absolute under a mistaken impression that no counsel had been instructed to show cause against it, it is usual for the party at whose instance the rule was obtained to consent to have the rule opened, by which all the proceedings subsequent to the day when cause ought to have been shown against it are in effect nullified, and the rule is then argued in the ordinary way.—*Brown*.

OPENING A TRIAL.—See **OPEN**, § 2.

OPENING BIDDINGS.—See **OPEN**, § 3.

OPENING PLEADINGS.—See **OPEN**, § 2.

OPENLY AND PUBLICLY, (in a declaration in action of slander). 2 Cro. 861.

OPENTIDE.—The time after corn is carried out of the fields.

OPERARIL.—Such tenants, under feudal tenures, as held some little portions of land by

the duty of performing bodily labor and servile works for their lord.—*Wharton*.

OPERATE ON THE LANDS, (in a contract). 20 Pick. (Mass.) 150.

OPERATING EXPENSES, (in a statute). 124 Mass. 154, 527.

OPERATIO.—One day's work performed by a tenant for his lord.

OPERATIVE, (in a statute). 2 Cush. (Mass.) 371, 373.

OPERATIVE PART.—In a conveyance, lease, mortgage, or other formal instrument, the operative part is that which carries out the main object of the instrument. Thus, in a conveyance or lease, the operative part consists of the operative words of conveyance or demise and the parcels. Sometimes everything which follows the recitals (*q. v.*) is called the "operative part," for the term has no fixed meaning. (*See* 1 Davids. Conv. 44.) In a mortgage, the operative part consists of (1) the covenant for payment of the mortgagè debt; (2) the conveyance of the mortgaged property; and (3) the proviso for reconveyance. 2 *Id.* 508 *et seq.*

OPERATIVE WORDS.—In the original sense of the phrase, operative words are words which have an operation or effect in the creation or transfer of an estate. Thus, in a gift of land to A. and B. and the heirs of the body of A., the word "heirs" is an operative word, because it creates an estate of inheritance in A.; and the words "of the body" are operative words, because they limit an estate tail. (Co. Litt. 26a. *See* HEIR, § 9.) More often, however, such words are called "words of limitation" (*q. v.*), and the term "operative words" is applied to those words which pass an estate. Thus, the words "enfeoff," "grant," "bargain and sell," demise," "alien," "release," and "confirm," are used in conveyances of freehold land as operative words, *i. e.* for the purpose of effecting an alienation of the land from the grantor to the grantee. 1 Dav. Prec. Conv. 72 *et seq.* *See* the various titles.

OPETIDE.—The ancient time of marriage, from Epiphany to Ash-Wednesday.

Opinio est duplex; scilicet, opinio vulgaris, orta inter graves et discre-

tos, et quæ vultum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis (4 Co. 107): Opinion is of two kinds, namely, common opinion, which springs up among grave and discreet men, and which has the appearance of truth; and opinion which springs up only among light and foolish men, without the semblance of truth.

OPINION, (in an award). 1 Ry. & M. 17.
—— (in report of commissioners). 14 Serg. & R. (Pa.) 67.
—— (in finding of facts by court). 1 Day (Conn.) 238.

OPINION EVIDENCE.—*See* EVIDENCE, § 7.

OPINION, UNQUALIFIED, (defined). 16 Cal. 128.

OPORTET.—It behooves, or is necessary. The initial word of the following among other maxims—

Oportet quod certa res deducatur in iudicium (Jenk. Cent. 84): A thing certain must be brought to judgment.

Oportet quod certa sit res quæ venditur (Bract. 61b): It is necessary that there should be a certain thing which is sold.

Oportet quod certæ personæ, terræ, et certi status, comprehendantur in declaratione usuum (9 Co. 9): It is right that given persons, lands and estates, should be comprehended in a declaration of uses.

OPPOSER.—An officer formerly belonging to the green-wax in the Exchequer.

OPPOSING INTEREST, (what is). 14 Bankr. Reg. 449.

—— (in the bankrupt act). 7 Biss. (U. S.) 280.

Opposita juxta se posita magis elucescunt (Bacon): Things opposite are more conspicuous when placed together.

OPPOSITE.—An old word for opponent.

OPPOSITE, (in a deed). 58 Me. 357.

OPPOSITE PARTY, (in a statute). 10 Heisk. (Tenn.) 447.

OPPRESSION.—The misdemeanor committed by a public officer, who, under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury. 1 Russ. Cr. & M. 297; Steph. Cr. Dig. 71. *See* EXTORTION.

OPPROBRIUM.—In the civil law, ignominy; infamy; shame.

Optima est legis interpret consuetudo (Lofft 237; D. 1, 3, 37): Custom is the best interpreter of the law.

**Optima est lex quæ minimum re-
linquit arbitrio judicis; optimus judex
qui minimum sibi** (Bac. Aphor. 46): That
system of law is best which confides as little as
possible to the discretion of a judge; that judge
the best who relies as little as possible on his
own opinion.

Optima statuti interpretatrix est
(*omnibus particulis ejusdem inspectis*)
ipsum statutum (8 Co. 117): The best
interpreter of a statute is [all the separate parts
being considered] the statute itself.

OPTIMACY.—Nobility; a class of men
of the highest social rank.

Optimus interpres rerum usus (2
Inst. 282): Custom is the best interpreter of
things.

**Optimus interpretandi modus est
sic leges interpretari ut leges legibus
concordant** (8 Co. 169): The best mode of
interpretation is so to interpret laws that they
may accord with each other.

**Optimus legum interpres consue-
tudo** (4 Inst. 75): Custom is the best inter-
preter of the laws.

Thus, a uniform and invariable interpretation
of any particular statute, extending over cen-
turies, is not to be destroyed or impugned upon
any grounds of argument whatsoever, notwith-
standing the interpretation does not commend
itself as the right one. *Morgan v. Crawshay*, L.
R. 5 II. L. 304.

OPTION.—

§ 1. **To purchase.**—A lease of lands or
houses may contain a provision that the
lessee shall have the option of purchasing
the property within a certain period, upon
giving the lessor notice of his intention to
exercise it. Such a notice constitutes a
contract of purchase, the specific perform-
ance of which may be compelled. *Wats.*
Comp. Eq. 101.

§ 2. The exercise of an option relates
back to the date of the lease or other in-
strument by which it was given, so as to
operate a constructive conversion of the
property from that date. If, therefore, the
lessor (being a freeholder) should die in-
testate before the option is exercised, the
reversion will pass to his heir; but when
the option is exercised, the reversion will
become personal property, and pass away
from the heir to the next of kin of the
deceased. *Wats. Comp. Eq.* 101. *See* **ELEC-
TION.**

§ 3. **Of archbishop.**—In ecclesiastical law,
an archbishop, when a bishop was consecrated
by him, had a customary prerogative to name a

clerk or chaplain of his own, to be provided for
by such suffragan bishop. In lieu of this right,
it was usual for the bishop to make over by deed
to the archbishop the next presentation of such
dignity or benefice within the bishop's see and
disposal, as the archbishop should choose.
Hence, this was called his "option." (2 *Steph.*
Com. 669; *Phillim. Ecc. L.* 93, 1140.) This
privilege was incidentally abolished by Stat.
3 and 4 Vict. c. 113, § 42, which forbids a spiri-
tual person to assign any patronage or presenta-
tion belonging to him by virtue of his office. 16.

OPTIONAL WRIT.—A *precepe*, so called
because it was in the alternative, commanding
the defendant to do the thing required, or show
the reason wherefore he had not done it.

OPTIONIS LEGATUM.—*See* **LEGA-
TUM OPTIONIS.**

OPTULIT.—*See* **OBTULIT**

OPUS.—Work; labor; the product of work
or labor.

OPUS LOCATUM.—(1) The product of
work let for use to another; (2) the hiring out
of work or labor to be done upon a thing.

OPUS MANIFICIUM.—Manual labor.

OR.—Gold, called *sol* by some heralds when
it occurs in the arms of princes, and *topaz* or
carbuncle when borne by peers. Engravers rep-
resent it by an indefinite number of small points.

OR.—As to when this dis-junctive parti-
cle is construed to mean "and," *see* the
cases referred to below; *also*, those referred
to under **AND**.

On, (when construed "and"). *Gilp.* (U. S.)
147; 39 *Ill.* 301; 2 *Harr. & G.* (Md.) 42; 1
Harr. & M. (Md.) 465; 10 *Mass.* 183, 188; 14
Pick. (Mass.) 449, 453; 15 *Id.* 23, 27; 20 *Id.*
378, 384; 5 *N. H.* 244; 3 *Gr.* (N. J.) 330; 3
Hallst. (N. J.) 43; 2 *Harr.* (N. J.) 281; *South.*
(N. J.) 419, 420; 4 *Zab.* (N. J.) 686; 1 *Bradf.*
(N. Y.) 314; 8 *Barb.* (N. Y.) 189; 24 *N. Y.*
463; 1 *Murph.* (N. C.) 380; 3 *Id.* 518; 64 *N. C.*
493, 563; 74 *Id.* 402; 2 *Binn.* (Pa.) 532; 82 *Pa.*
St. 306, 326; 2 *Rawle* (Pa.) 28; 13 *Serg. & R.*
(Pa.) 207; 6 *Watts* (Pa.) 206; 1 *Yentes* (Pa.)
41; 3 *Id.* 117; 1 *Bail.* (S. C.) 427; 1 *Call* (Va.)
184; 24 *Wis.* 394, 407; 1 *Dak.* T. 308; 2 *Wheel.*
Am. C. L. 326; 2 *Atk.* 613; 3 *Id.* 194, 408; 1
Burn. & Ad. 232; 2 *Bos. & P. N. R.* 38; 1 *Con.*
& *L.* 525; 2 *Cox* (Ch. 213, 217; 1 *Cro.* 832; 2
Dru. & W. 471; 9 *East* 366, 493; 12 *Id.* 288;
16 *Id.* 67; 3 *Jur.* 286; 9 *Id.* 269; 10 *Id.* 23,
768; 9 *Mod.* 444; *Poll.* 645, 647; 5 *Sim.* 435;
8 *Id.* 330; 9 *Id.* 591; 15 *Id.* 83, 368; 2 *Str.*
1175 n.; 1 *Taunt.* 174, 182; 3 *T. R.* 470; 7 *Id.*
504; 3 *Ves.* 453; 6 *Id.* 341, 559; 7 *Id.* 128; 1
Ves. M. 409; *Willes* 311; 1 *Wils.* 140; 8 *Com.*
Dig. 444.

(not construed "and"). 12 *B. Mon.*
(Ky.) 647; 14 *W. Va.* 301; 8 *Am. L. Reg.* 663.
—— (not equivalent to "but"). 1 *Whart.*
(Fl.) d.

OR, (in an agreement). 2 *Ld. Raym.* 1366; 5 *Com. Dig.* 338.

— (in a bond). 20 *Tex.* 438; *Comb.* 37; *Cro. Jac.* 322, 594; 2 *Mod.* 304; 2 *Dyer* 108.

— (in criminal complaint). 12 *R. I.* 285.

— (in an indictment). 2 *Gray (Mass.)* 501, 502; 4 *Park. (N. Y.) Cr.* 26; 1 *Bail. (S. C.)* 144; 6 *Wheel. Am. C. L.* 12; *Burr.* 400.

— (in pleading). *Chit. Pl.* 206, 207.

— (in a policy of insurance). 3 *Mass.* 476.

— (in a power of attorney). 5 *Pet. (U. S.)* 132.

— (in a promissory note). 1 *Bail. (S. C.)* 13.

— (in specification for patent). *L. R. I. H. L.* 315.

— (in a statute). 2 *Paine (U. S.)* 162; 76 *Ill.* 265; 41 *Iowa* 563; 9 *Bush (Ky.)* 337; 105 *Mass.* 185; 20 *Pick. (Mass.)* 477; 1 *Halst. (N. J.)* 418; 6 *Id.* 215; 40 *N. Y.* 97; 74 *N. C.* 402; 9 *Phil. (Pa.)* 337; 1 *Serg. & R. (Pa.)* 250; 6 *T. R.* 771; 11 *Moo. P. C.* 337.

— (in a will). 2 *Mas. (U. S.)* 208; 3 *Bradf. (N. Y.)* 45, 52; 6 *Johns. (N. Y.)* 54; 1 *Johns. (N. Y.) Ch.* 220; 5 *Paige (N. Y.)* 512, 573; 1 *Wend. (N. Y.)* 396; 5 *Binn. (Pa.)* 262; 1 *Yeates (Pa.)* 319; 2 *Id.* 380; 4 *Wheel. Am. C. L.* 365; 1 *Cox Ch.* 341; *Cro. Eliz.* 525; 6 *East* 486; 2 *Sim.* 225.

OR ANY OTHER, (in a power of attorney). 5 *Cush. (Mass.)* 533.

OR ANY OTHER BANKING GAME, (in a statute). 9 *Tex.* 521.

OR AS AGENT, (in a policy of insurance). 12 *Mass.* 80, 84.

OR ELSEWHERE, (in shipping articles). 2 *Gall. (U. S.)* 477.

OR HIS ORDER ONLY, (indorsed on a promissory note). 4 *Call (Va.)* 411.

OR ORDER, (in bills and checks). 3 *Abb. (N. Y.) App. Dec.* 269; 5 *Abb. (N. Y.) Pr. n. s.* 11; 36 *Hov. (N. Y.) Pr.* 190; 3 *Keyes (N. Y.)* 365.

OR OTHER CATTLE, (in a statute). 1 *Bl. Com.* 88.

OR OTHER COMPANY, (in a statute). 8 *Mass.* 332.

OR OTHER DEVICE, (in an act forbidding gaming). 1 *Cranch (U. S. C. C.)* 535.

OR OTHER OFFICER, (in a statute). 8 *Metc. (Mass.)* 247.

OR OTHER PERSON, (in a statute). 2 *Cranch (U. S.)* 309.

OR OTHER SIMILAR OFFICERS, (in a statute). 9 *Cush. (Mass.)* 181, 191.

OR OTHER SPIRITUOUS LIQUOR, (in an indictment). 7 *Watt. (Va.)* 592.

OR OTHER THING, (in a statute). 126 *Mass.* 47.

OR OTHER WOMAN, (in a bond). 3 *Wheel. Am. C. L.* 207 n.

OR OTHERWISE, (in a sentence of a foreign court of admiralty). 8 *Mass.* 543.

— (in a statute). 2 *Wheat. (U. S.)* 119; 9 *Metc. (Mass.)* 253, 258; 4 *Bing.* 45, 50; 1 *Russ.* 164; 2 *Eng. L. & Eq.* 286.

ORÆ.—A Saxon coin, valued at sixteen pence, and sometimes at twenty pence.—*Domesd.*

ORACULUM.—A decision by a Roman emperor.

ORAL.—Delivered by word of mouth spoken, not written.

ORAL PLEADING.—Pleading by word of mouth in presence of the judges. This was the original mode of pleading; it was, however, except in criminal cases, superseded by written pleadings in the reign of Edward III.—*Wharton*.

ORANDO PRO REGE ET REGNO.—An ancient writ which issued, while there was no standing collect for a sitting parliament, to pray for the peace and good government of the realm.

ORATIO OBLIQUA.—See OBLIQUA ORATIO.

ORATOR—ORATRIX.—LATIN: *orare*, to pray.

The names for a male and female plaintiff in a Chancery suit.

ORBATION.—Privation of parents or children; poverty.

ORCINUS LIBERTUS.—In the Roman law, a freedman who obtained his liberty by the direct operation of the will or testament of his deceased master, was so called, being the freedman of the deceased (*orcinus*), not of the *heres*.—*Brown*.

ORDAIN, (defined). 4 *Conn.* 134, 139.

ORDAIN AND ESTABLISH, (in constitution of United States). *South. (N. J.)* 38; *Story Const. L.* 118, 161, 163.

ORDAINED MINISTER, (who is). 4 *Conn.* 134, 139.

ORCHARD, (in road act). 23 *Wend. (N. Y.)* 360.

ORDEAL.—An ancient manner of trial in criminal cases, practiced amongst the Saxons, who affected to believe that God would actively interpose to establish an earthly right. There were four sorts: (1) Campfight, *duellum*, or combat; (2) fire ordeal; (3) hot water ordeal; (4) cold water ordeal; which titles see *Verstegan's Restitution of Decayed Intelligence* 64; 2 *Turner Ang. Sax.* 532; 2 *Hallam Mid. Ages* 466.—*Wharton*.

ORDEFFE, or ORDELFEE.—A liberty whereby a man claims the ore found in his own land; also, the ore lying under land.—*Cowell*.

ORDELS.—The right of administering oaths and adjudging trials by ordeal within a precinct or liberty.—*Cowell*.

ORDER.—

§ 1. Bill of exchange, &c.—In its simplest sense, an order is a mandate or direction. Thus, bills of exchange, checks, &c., are said to be drawn to order when the

payee is entitled to transfer the right to claim payment to any person whom he may direct. *See* BEARER; BILL OF EXCHANGE, § 2; DELIVERY; NEGOTIABLE; ORDER.

§ 2. **Judicial.**—More commonly, however, order signifies a direction or command by a court of judicature. As a general rule, "order" is opposed to "judgment;" and, therefore, denotes (1) orders made in summary proceedings on petition or summons (*see* SUMMARY); and (2) orders made in actions on interlocutory applications, whether before or after final judgment. (*See* INTERLOCUTORY.) Such are the ordinary orders for discovery and production of documents, orders for time, &c., made in the course of almost every action.

§ 3. **Order to show cause.**—In the practice of courts of record, an order to show cause is an order obtained by one party on an *ex parte* application, and calls on the other party to show cause within a certain time why a certain order should not be made; and then the order is either discharged or made absolute. The order to show cause is not granted unless the applicant has a *prima facie* case, and is, in general, a mere substitute for a notice of motion. In some cases an order is made *ex parte* absolute in the first instance. Arch. Pr. 1257. As to orders of course, *see* OF COURSE.

§ 4. **Orders in council.**—Rules of Court.—Orders are also issued by subordinate legislative authorities. Such are the English Orders in Council, or orders issued by the Privy Council in the name of the queen, either in exercise of the royal prerogative or in pursuance of an act of parliament. (H. Cox Inst. 27.) The Rules of Court under the Judicature Act are grouped together in the form of orders, each order dealing with a particular subject-matter. *See* RULE.

ORDER, (defined). 8 Cal. 52, 57; 4 How. (N. Y.) Pr. 335; N. Y. Code of Pro. § 400.

— (what is). 5 Duer (N. Y.) 684.

— (distinguished from "judgment"). 1 Cal. 27, 28; 10 How. (N. Y.) Pr. 97.

— (distinguished from "requisition"). 19 Johns. (N. Y.) 7.

— (a decision of the court upon a demurrer is not). 3 Code (N. Y.) Rep. 37.

ORDER, (not a bill of exchange). 1 Hill (N. Y.) 583.

— (to pay out of a particular fund is an assignment of the fund). 5 Paige (N. Y.) 632.

— (in a receipt). 14 Conn. 445.

— (in a statute). 1 Baldw. (U. S.) 370;

1 Cal. 136; 48 N. H. 45; 4 Abb. (N. Y.) Pr.

90; 5 How. (N. Y.) Pr. 247; 13 Id. 193; 15 Id.

57, 60; 76 N. Y. 294, 300; 2 Barn. & C. 45, 53.

— (in a will). 1 Wils. 178.

ORDER AND DISPOSITION.—The "order and disposition clause" of the English Bankruptcy Acts* is that on which the doctrine of reputed ownership rests. It is so called from its containing the provision that all goods and chattels being at the commencement of the bankruptcy in the possession, order or disposition (*i. e.* in the possession or apparent control) of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner, shall pass to the trustee as if they belonged to the bankrupt. *See* BANKRUPTCY; POSSESSION; REPUTED OWNERSHIP.

ORDER, IN GOOD, (in a bill of lading). 7 Mass. 300; 1 Bail. (S. C.) 174.

ORDER, KEEP IN, (in an agreement). 3 Tyrw. 907.

ORDER NISI.—A conditional order, which is to be confirmed *unless* something therein directed be done by a time specified.

ORDER OF DISCHARGE.—*See* BANKRUPTCY, p. 111, *n.*; DISCHARGE, § 4; INSOLVENCY, §§ 2, 3.

ORDER OF FILIATION.—*See* AFFILIATION.

ORDER OF REFERENCE.—*See* REFERENCE.

ORDER OF REVIVOR.—An order, as of course, for the continuance of an abated suit. It superseded the bill of revivor. *See* ABATEMENT; OF COURSE.

ORDER OR ASSIGNS, (in bill of lading). 1 L. R. 5 P. C. 253.

— (when not necessary in a bond). 2 Halst. (N. J.) 91 *n.*

ORDER OR DECRET, (in United States judiciary act). 7 Cranch (U. S.) 154.

ORDER OR RULE, (in the Code is in no case synonymous with "judgment"). 3 Code (N. Y.) Rep. 241.

* Bankr. Act, 1869, § 15, § 5; *In re Blanshard*, 8 Ch. D. 601; 21 Jac. I. c. 19, s. 11; 6 Geo. IV. c. 16, § 72; Bankr. Act, 1849, § 125; *see* Robs. Bankr. 412 *n.* The Bills of Sale Act,

1878, § 20, abolished the doctrine that goods comprised in a registered bill of sale remain in the order and disposition of the grantor.

ORDERED, (in a statute). 39 Iowa 224.

— (in a will, when means "authorized"). 14 Vr. (N. J.) 8.

ORDERED, IT IS, (in record of court). 1 Barn. & C. 711; 3 Dowl. & Ry. 173.

ORDERED, JUDGMENT IS, (in record of court). Penn. (N. J.) 204.

ORDERS, ALL PREVIOUS, (in the Code, Art. V., § 22). 41 Md. 419.

ORDERS OF THE CLERGY.—See HOLY ORDERS.

ORDERS OF THE DAY.—Any member of a legislative body, such as the House of Commons or of representatives, who wishes to propose any question, or to "move the house," as it is termed, must, in order to give the house due notice of his intention, state the form or nature of his motion on a previous day, and have it entered in a book entitled the order book; and the motions so entered, the house arranges, shall be considered on particular days, and such motions or matters, when the day arrives for their being considered, are then termed the "orders of the day." May Parl. Pr.

ORDINANCE.—According to Coke, "the difference between an act of parliament and an ordinance in parliament, is, for that the ordinance wanteth the threefold consent [of lords, commons and crown], and is ordained by one or two of them." (4 Inst. 25; Co. Litt. 159b.) According to other writers, an ordinance was in the nature of a declaration by the crown in answer to a petition by the commons, on a question as to the law applicable to a given case, while a statute was an enactment of new law. Reeves Hist. Eng. Law ch. xvi.; Bac. Abr. Statute (A).

ORDINANCE, (defined). 4 Crim. L. Mag. 81.

ORDINANCE OF THE FOREST.—A statute made touching matters and causes of the forest. 33 and 34 Edw. I.

ORDINANCE, PROVIDING BY, (in charter of city of St. Louis). 56 Mo. 104.

ORDINANDI LEX.—The law of procedure as distinguished from the substantial part of the law.

Ordinarius ita dicitur quia habet ordinariam jurisdictionem, in jure proprio, et non propter deputationem (Co. Litt. 98): The ordinary is so called because he has an ordinary jurisdiction in his own right, and not a deputed one.

ORDINARY.—

§ 1. In English law.—The bishop of a diocese when exercising the ecclesiastical jurisdiction annexed to his office, he being *juxta ordinarius* within his diocese. Hale C. L. 35; Co. Litt. 96a, 344a. See BISHOP, § 1.

§ 2. In American law.—A judicial officer, in several of the States, clothed by statute with powers in regard to wills, probate, administration, guardianship, &c.

ORDINARY, (defined). 3 Burns Ecc. L. 22.

— (equivalent to "common" or "usual"). 37 Conn. 123, 126.

ORDINARY AND CONCISE LANGUAGE, (in a statute). 33 Barb. (N. Y.) 627, 629.

ORDINARY BUSINESS, (defined). 3 Bosw. (N. Y.) 290; 19 (N. Y.) 207.

ORDINARY CALLING, (in a statute). 14 Wend. (N. Y.) 250; 3 Barn. & C. 232; 5 Id. 406; 7 Id. 596; 4 Bing. 84, 89; 5 Dowl. & Ry. 82; 8 Id. 204.

ORDINARY CARE.—See BAILMENT, §§ 1, 2; CARE; NEGLIGENCE.

ORDINARY CARE, (defined). 25 Ind. 185; 52 N. H. 528; 6 Duer (N. Y.) 633, 645; 35 N. Y. 9, 27; 11 Ired. (N. C.) L. 640; 3 Brewst. (Pa.) 9.

— (what constitutes). 26 Ind. 334; 6 Cush. (Mass.) 292; 10 Gray (Mass.) 274.

— (what is want of). 25 Md. 521.

— (equivalent to "reasonable care"). 23 Conn. 437, 443; 74 Ill. 232; 3 Allen (Mass.) 33.

ORDINARY CONVEYANCES.—Those deeds of transfer which are entered into between two or more persons, without an assurance in a superior court of justice. See DEED.

ORDINARY COURSE OF TRADE, (taking a note in). 9 Wend. (N. Y.) 170.

ORDINARY DILIGENCE AND CARE, (by carriers). 42 Ill. 132.

ORDINARY DOMESTIC BUSINESS OF FAMILY CONCERNS, (in turnpike act). 12 Vt. 212.

ORDINARY FENCES, (in a statute). 37 Conn. 123, 126.

ORDINARY OF ASSIZE AND SESSIONS.—A deputy of the bishop of the diocese, anciently appointed to give malefactors their neck-verses, and judge whether they read or not; also, to perform divine services for them, and assist in preparing them for death. Wharton.

ORDINARY OF NEWGATE.—The clergyman who is attendant upon condemned malefactors in that prison to prepare them for death; he records the behavior of such persons. Formerly, it was the custom of the ordinary to publish a small pamphlet upon the execution of any remarkable criminal.—Wharton.

ORDINARY LANGUAGE, (in Code Pro. § 149, subd. 2). 35 Barb. (N. Y.) 627, 629.

ORDINARY NEGLIGENCE, (defined). 1 Edw. (N. Y.) 513, 543; 24 N. Y. 181.

ORDINARY NEGLIGENCE, (what is). 10 Kan. 288.

— (distinguished from "slight negligence" and "gross negligence"). 4 Keyes (N. Y.) 108.

ORDINARY PROCESS OF LAW, (in a statute). 50 Mo. 525.

ORDINARY SKILL, (in an art). 20 Pa. St. 180.

ORDINATION is the ceremony by which a bishop confers on a person the privileges and powers necessary for the execution of sacerdotal functions in the church. (Phillim. Ecc. L. 110) He thereby becomes a clerk in holy orders, and capable of being presented and admitted to a benefice. See ADMISSION, § 1; BENEFICE; RECTOR; VICAR.

ORDINATION, (defined). 4 Conn. 134, 139; 16 Mass. 512.

ORDINATIONE CONTRA SERVIENTES.—A writ that lay against a servant for leaving his master, contrary to the ordinance of Stat. 23 and 24 Edw. III.—*Reg. Orig.* 189.

Ordine placitandi servato, servatur et jus (Co. Litt 303a): The order of pleading being preserved, right is preserved.

ORDINES.—A general chapter or other solemn convention of the religious of a particular order.

ORDINES MAJORES ET MINORES.—The holy orders of priest, deacon, and sub-deacon, any of which qualified for presentation and admission to an ecclesiastical dignity or cure, were called *ordines majores*; and the inferior orders of chanters, psalmists, ostiary, reader, exorcist, and acolyte, were called *ordines minores*; persons ordained to the *ordines minores* had their *prima tonsura*, different from the *tonsura clericalis*.—*Cowell*.

ORDINIS BENEFICIUM.—See BENEFICIUM ORDINIS.

ORDINUM FUGITIVI.—Those of the religious who deserted their houses, and, throwing off the habits, renounced their particular order in contempt of their oath and other obligations.—*Par. Antiq.* 388.

ORDNANCE DEBENTURES.—Bills which were issued by the English board of ordnance on the treasurer of that office for the payment of stores, &c.—*Wharton*.

ORDNANCE OFFICE, or BOARD OF ORDNANCE.—An office which was kept within the Tower of London, and which superintended and disposed of all the arms, instruments, and utensils of war, both by sea and land, in all the magazines, garrisons, and forts of Great Britain. It is divided into two distinct branches, the civil and the military. (4 and 5 Will. IV. c. 24.) But by 18 and 19 Vict. c. 117, the powers, duties, &c., of the board, were

transferred to the secretary of state for war.—*Wharton*.

ORDO.—(1) That rule which monks were obliged to observe. (2) Order; regular succession. (3) An order of a court.

ORDO ALBUS.—The white friars or Augustines; the Cistercians also wore white.

ORDO ATTACHIAMENTORUM.—The order of attachments.

ORDO JUDICIORUM.—The order of judgments; the rule by which the due course of hearing each cause was prescribed. 4 Reeves Hist. Eng. Law 17.

ORDO NIGER.—The black friars. The Cluniacs likewise wore black.

ORE TENUS.—Orally. See DEMURRER, § 2 *et seq.*; ORAL.

ORFGILD.—A delivery or restitution of cattle. But Lambard says it is a restitution made by the hundred or county for any wrong done by one who was in pledge, or rather a penalty for taking away cattle. Lamb. Arch. 125.

ORGANIZE, (defined). 38 Conn. 56, 66.

ORGILD.—Without recompense; as where no satisfaction was to be made for the death of a man killed, so that he was judged lawfully slain.—*Spel. Gloss.*

ORIGEL.—See ORWIGE.

ORIGINAL and DERIVATIVE ESTATES.—An original is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a derivative estate; and a derivative estate is a particular interest carved out of another estate of larger extent. Prest. Est. 125.

ORIGINAL BILL, (what is not). 8 Pet. (U.S.) 3.

ORIGINAL BILL IN EQUITY.—See BILL OF COMPLAINT, § 4.

ORIGINAL CHARTER.—One by which the first grant of land is made. On the other hand, a charter by progress is one renewing the grant in favor of the heir or singular successor of the first or succeeding vassals.—*Bell Diet.*

ORIGINAL CONTRACTOR, (in mechanics' lien law). 53 Mo. 324.

ORIGINAL CONVEYANCE.—See CONVEYANCE, § 4.

ORIGINAL CONVEYANCE, (defined). 1 Bl. Com. 309.

ORIGINAL DISCOVERY, (in patent law). 3 Wheat. (U. S.) 514.

ORIGINAL ENTRY.—The first entry made by a merchant, tradesman, or other person, in his account books, charging another with merchandise, materials, work or labor, or cash, on a contract made between them.—*Bowvier*.

ORIGINAL ENTRY, (what is). 13 Mass. 427; 4 Rawle (Pa.) 408; 4 Serg. & R. (Pa.) 3, 5; 9 *Id.* 285; 16 *Id.* 133; 2 Watts (Pa.) 347; 3 *Id.* 325.

— (what is not). 1 Halst. (N. J.) 96; 1 Rawle (Pa.) 435; 4 *Id.* 291, 404; 5 Serg. & R. (Pa.) 408; 13 *Id.* 126; 2 Watts (Pa.) 451; 5 *Id.* 286.

ORIGINAL ESTATE, (defined). Pres. Est. 125.

ORIGINAL EVIDENCE.—*See* EVIDENCE, § 8.

ORIGINAL JURISDICTION.—*See* JURISDICTION, § 3.

ORIGINAL JURISDICTION, (distinguished from "appellate"). 2 Minn. 86, 88.

— (in United States constitution). 5 Serg. & R. (Pa.) 545.

— (in a statute). 6 Binn. (Pa.) 5, 11.

ORIGINAL OWNER, (defined). 61 Pa. St. 202.

ORIGINAL PROCEEDING, (what is not). 7 Pet. (U. S.) 285.

ORIGINAL PROCESS.—That process which is for the defendant's appearance. Finch Law b. 4, ch. 26. *See* PROCESS; SUMMONS; WRIT.

ORIGINAL SUIT, (what is not). 12 Pet. (U. S.) 164.

ORIGINAL SUITS, (in a statute). 5 Paige (N. Y.) 304.

ORIGINAL TITLE.—*See* TITLE.

ORIGINAL WRIT.—*See* WRIT.

ORIGINAL WRIT, (a writ of replevin is). 3 Mass. 200.

ORIGINALIA.—Transcripts sent to the remembrancer's office in the Exchequer out of the Chancery, distinguished from *records*, which contain the judgments and pleadings in actions tried before the barons.—*Wharton*.

ORIGINALLY DISCOVERED, (in patent act). Fess. Pat. 59, 281.

ORIGINALLY HEARD, (in a statute). 8 Mass. 91.

Origine propria neminem posse voluntate sua eximi manifestum est (Cod. 10, 38, 4): It is evident that no one is able of his own pleasure, to do away with his proper origin.

ORNAMENT, (in a statute). 43 N. Y. 533.

ORNAMENTAL TIMBER, (what is). 5 Paige (N. Y.) 522; 6 Ves. 110; 16 *Id.* 375.

ORNEST.—The trial by battle which does not seem to have been usual in England before the time of the Conqueror, though without doubt originating in the kingdoms of the north, where it was practiced under the name of *holmgang*, from the custom of fighting duels on a small island or *holm*.—*Anc. Inst. Eng.*

ORPHAN.—A fatherless child or minor, or one deprived of both father and mother.

ORPHAN, (in a will). 33 Pa. St. 9.

ORPHANAGE PART.—That portion of an intestate's effects which his children were entitled to by the custom of London. This custom appears to have been a remnant of what was once a general law all over England, namely, that a father should not by his will bequeath the entirety of his personal estate away from his family, but should leave them a third part at least, called the "children's part," corresponding to the "bairns' part" or *legitim* of Scotch law, and also (although not in amount) to the *legitima quarta* of Roman law. (2 Just. 18.) This custom of London was abolished by the Stat. 19 and 20 Vict. c. 94.—*Brown*.

ORPHANOTROPHI.—In the civil law, managers of houses for orphans.

ORPHAN'S BUSINESS, (in constitution of Mississippi, of 1817 and 1832). 54 Miss. 289.

ORPHANS, (in a will). 40 Wis. 276, 290; 2 Sim. & S. 93.

ORPHANS' COURT.—The name used in some of the States—Delaware and New Jersey, for instance—as the title of a court having jurisdiction over the probate of wills, and the administration and settlement of decedents' estates. *See* COURT OF PROBATE, § 1.

ORPHANS' COURT, (jurisdiction of). Ccxi (N. J.) 155; Sax. (N. J.) 259.

ORTELLI.—The claws of a dog's foot.—*Kitch*.

ORTOLAGIUM.—A garden plot or hortilage.

ORWIGE—SINE WITA.—Without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *forhith*, or deadly feud, on the part of the family of the slain.—*Anc. Inst. Eng.*

OSCULUM PACIS.—A former custom of the Church of England, so called because in the celebration of the mass, after the priest had spoken these words, *Pax Domini vobiscum*, the people kissed each other; afterwards, when this

custom was abrogated, another was introduced, which was that whilst the priest spoke the aforementioned words, a deacon offered the people an image to kiss, which was commonly called *paxem*. Matt. Paris, A. D. 1100.

OSTENSIBLE PARTNER.—One whose name is made known, and appears to the world as a partner, and is really such. See **NOMINAL PARTNER**.

OSTENSIBLE PARTNER, (who is). 2 Steph. Com. 101-104.

OSTENSIO.—A tax anciently paid by merchants, &c., for leave to show or expose their goods for sale in markets.—*Du Cange; Anc. Inst. Eng.*

OSWALD'S LAW.—The law by which was effected the ejection of married priests, and the introduction of monks into churches, by Oswald, Bishop of Worcester, about A. D. 964.—*Wharton.*

OSWALD'S LAW HUNDRED.—An ancient hundred in Worcestershire, so called from Bishop Oswald, who obtained it from King Edgar, to be given to St. Mary's Church in Worcester. It was exempt from the sheriff's jurisdiction, and comprehends 300 hides of land.—*Cam. Brit.*

OTHER, (in a statute). 1 Brock. (U. S.) 175, 187; 15 Wend. (N. Y.) 463; L. R. 8 Ex. 160.

OTHER ACTIONS, (in a statute). 20 Pick. (Mass.) 201, 203; 23 Hun (N. Y.) 85.

OTHER ACTS, (in a will). 3 Brewst. (Pa.) 325.

OTHER BODY CORPORATE, (in a statute). 5 Mass. 101.

OTHER CASUALTY, (in a lease). 24 Wend. (N. Y.) 254.

OTHER CONSIDERATION, (in a deed). 7 Johns. (N. Y.) 341.

OTHER CRIME, (in extradition act). 112 Mass. 409; 17 Am. Rep. 114.

OTHER EFFECTS, (in a statute). 9 Wend. (N. Y.) 190.

— (in a will). 2 Ch. D. 122; 15 Ves. 326; 8 Com. Dig. 473.

OTHER ESTATE, (in a statute). 4 Cush. (Mass.) 448.

OTHER FEES, (in a statute). 32 Me. 180.

OTHER LANDS, (in a statute). Sax. (N. J.) 229.

OTHER LEGAL DISABILITIES, (under statute of limitations). 74 Ind. 518.

OTHER MEMORANDA, (in a statute). 59 Me. 361.

OTHER METALS, ALL, (in a statute). 2 Barn. & Ad. 592.

OTHER NECESSARIES, (in a covenant). 2 Cro. 486; 3 Mod. 69.

OTHER NECESSARY TOWN CHARGES, (in a statute). 52 Me. 595.

OTHER OFFENSE, (in act of congress). Serg. Const. L. 333.

OTHER OFFENSES, (in a statute). 3 Wheat. (U. S.) 627.

OTHER OFFICER, (in a statute). 2 Gr. (N. J.) 191; 11 East 25.

OTHER OFFICES, (in a statute). 5 Barn. & C. 640, 644; 8 Dowl. & Ry. 393, 398.

OTHER PERSON, (in a statute). 38 Iowa 321, 324.

OTHER PERSONAL PROPERTY, (in a mortgage). 23 How. (U. S.) 117.

OTHER PLACE, (in a statute). 3 Wheat. (U. S.) 390.

OTHER PROOF, (in a statute). 2 Binn. (Pa.) 426.

OTHER PROPER PERSON, (in a statute). 2 Gr. (N. J.) 499.

OTHER PROPERTY, (in a statute). 6 Cush. (Mass.) 141, 142.

OTHER STRUCTURES CONNECTED THEREWITH, (in mechanics' lien law). 67 N. Y. 149.

OTHER SURVIVING, (in a will). L. R. 10 Eq. 252.

OTHER THINGS, (in a deed of assignment). 2 Watts (Pa.) 64.

— (in a will). 2 Harr. & M. (Md.) 273.

OTHER TREES, (in a lease). 5 Barn. & C. 842.

OTHERS, (in an indictment). 11 Mass. 93.

— (in a statute). 2 Atk. 601; 3 Co. 82.

OTHERS, AND, (as plaintiffs in a writ of error). 8 Pet. (U. S.) 526.

OTHERWISE, (in a covenant). 1 Bro. Ch. 152.

— (in a deed). 11 Pick. (Mass.) 193.

— (in a marriage settlement). 8 Wend. (N. Y.) 276.

— (in an order of court). 1 Chit. 205, 206.

— (in a statute). 23 N. Y. 366; 4 Co. 1, 2.

— (in a will). 2 Atk. 542; Burr. 52.

OTHERWISE, AND, NOT, (in a will). 1 Wils. 161.

OTHERWISE, NOT, (in a covenant). 1 Gall. (U. S.) 39.

OTHERWISE, OR ELSEWHERE, AND NOT, (acceptance of a bill payable at a particular place). 5 Q. B. 86.

OTHERWISE PART WITH THE PREMISES, (in a covenant). 4 Dowl. & Ry. 226.

OUR PROPORTION, (in a release). 9 Mass. 226, 236.

OURLOP.—The lieiwite or fine paid to the lord by the inferior tenant, when his daughter was debauched.—*Cornell.*

OURSELVES, AND EACH OF US, WE BIND, (in a bond). 2 Day (Conn.) 442.

OURSELVES, OUR HEIRS, WE BIND, (in a bond). 4 Watts (Pa.) 50.

OURSELVES, WE BIND, (in a bond). 2 Wheel. Am. C. L. 380.

OUST—OUSTER.—To oust a person from land is to take the possession from him so as to deprive him of the freehold. (Co. Litt. 181a.) An ouster may be either rightful or wrongful. (Litt. § 401.) A wrongful ouster is a disseisin (q. v.) *Id.* § 279; Co. Litt. 153b.

Blackstone divides ouster into abatement, intrusion, disseisin, discontinuance and deforcement, and also applies the

term to chattels real, (3 Bl. Com. 167;) but this use of the word does not seem to be warranted by the old writers. See DE-FORCEMENT.

OUSTER, (defined). 30 Conn. 492, 497; 1 Chit. Gen. Pr 374.

—— (what constitutes). 11 Pet. (U.S.) 41; 1 Mass. 323; 3 *Id.* 523; 4 *Id.* 418.

—— (what is not). 7 Mass. 381.

OUSTER LE MER.—Beyond the sea; a cause of excuse, if a person, being summoned, did not appear in court.—*Cowell*.

OUSTERLEMAIN.—

§ 1. A writ directing the seisin or possession of land to be delivered out of the hands of the crown into those of a person entitled to it. (*Termes de la Ley*, s. v.) It was the mode by which an heir in ward of land held of the crown *ut de honore* obtained possession of it on attaining majority. Co. Litt. 77 a. See LIVERY; WARD-SHIP.

§ 2. Ousterlemain also meant a judgment on a *monstrans de droit*, deciding that the crown had no title to a thing which it had seized. Staunf. P. C. & Pr. 77 b. See AMOVEAS MANUS; IN CAPITE.

OUT, (an insurance upon goods). 10 Mass. 29, 30.

OUT AND OUT, (in a deed of trust). 36 Pa. St. 204.

OUT OF COURT.—A plaintiff in an action at common law must have declared within one year after the service of a writ of summons, otherwise he was out of court, unless the court had, by special order, enlarged the time for declaring.

OUT OF COURT, (in a rule of court). 2 Gr. (N. J.) 345.

OUT OF HIS ESTATE, (in a will). 2 Halst. (N. J.) 41, 45.

OUT OF THE LIMITS OF THE UNITED STATES, (in a statute). 2 Dall. (U.S.) 217; 9 Serg. & R. (Pa.) 289; 1 Yeates (Pa.) 329.

OUT OF THE REALM.—See ABSENCE; BEYOND SEAS.

OUT OF THE STATE, (synonymous with "beyond seas"). 3 Wheat. (U.S.) 541; 1 Harr. & J. (Md.) 350; 2 McCord (S. C.) 331.

—— (in a statute). 109 Mass. 41, 43; 3 Johns. (N. Y.) 261, 267.

OUT OF THEIR JOINT FUNDS, (in a promissory note). 4 Serg. & R. (Pa.) 356.

OUT OF TIME.—See OVERDUE, § 2.

OUT OF WHOM, (in an act of incorporation). 4 Hen. & M. (Va.) 315.

OUTER BAR.—In English law, barristers are divided into two classes, viz., queen's counsel, who are admitted within the bar of the courts, in seats specially reserved for themselves; and

junior counsel, who sit without the bar; and the latter are thence frequently termed barristers of the "outer bar," or "utter bar," in contradistinction to the former class. See BAR, §§ 2, 3.

OUTER DOOR, (what is). 1 Esp. 99.

OUTER HOUSE.—The name given to the great hall of the Parliament House in Edinburgh, in which the lords ordinary of the Court of Session sit as single judges to hear causes. The term is used colloquially as expressive of the business done there in contradistinction to the Inner House, the name given to the chambers in which the First and Second Divisions of the Court of Session hold their sittings.—*Bell Dict.*

OUTFANG-THEFF.—A liberty or privilege in the ancient common law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court.—*Du Cange*.

OUTFIT.—

§ 1. Of whaling vessel.—A word of originally limited meaning, as applied to different trades and in its application to vessels; but it has acquired an enlarged meaning in the hands of merchants engaged in whaling voyages, adapted to their growing trade. As thus used, "outfits" is a word not clearly defined and strictly limited in its import, but is subject to be explained by proof of usage in the whaling business, and of what are generally regarded as outfits by persons in that business.

§ 2. Of foreign minister.—An allowance made by the government of the United States to a minister plenipotentiary or *chargé des affaires*, on going from the United States to any foreign country.—*Bouvier*.

OUTFITS, (defined). 9 Metc. (Mass.) 354, 364. — (in policy of insurance). 1 Story (U. S.) 603; 8 East 373.

—— (*quere* whether included in the word "cargo" in a policy of insurance). 11 Pick. (Mass.) 227.

OUTGOING, (in contract of sale). 4 Ex. D. 309.

OUTGOINGS, (in a covenant). L. R. 9 Ex. 209.

OUTHEST, or OUTHOM.—A calling men out to the army by sound of horn.—*Jacob*.

OUT-HOUSE.—A building belonging to and adjoining a dwelling house.

OUT-HOUSE, (defined). 4 Conn. 446, 448; 10 *Id.* 144, 146; 2 Root (Conn.) 516.

OUT-HOUSE, (what is). 1 Moo. 398; 2 *Id.* 308; 2 McCord (S. C.) 438; 15 Tex. 260; 1 Car. & K. 303; Russ. & R. C. C. 295.

— (what is not). 10 Conn. 144; 8 Barn. & C. 461; 5 Car. & P. 555; 6 *Id.* 402; 2 Cox C. C. 186; 1 Moo. 336.

— (is included in the word "house"). 2 East P. C. 1020.

— (in a statute). 1 Chit. Gen. Pr. 173, 174.

— (setting fire to, what is not). 2 East P. C. 1820; 1 Leach C. C. 49.

OUT-HOUSE WHERE PEOPLE RESORT, (in a statute). 19 Tex. 102.

OUTLAND.—The Saxon Thanes divided their hereditary lands into inland, such as lay nearest their dwelling, which they kept to their own use; and outland, which lay beyond the demesnes, and was granted out to tenants, at the will of the lord, like copyhold estates. This outland they subdivided into two parts; one part they disposed amongst those who attended their persons, called "Theodans," or "lesser Thanes;" the other part they allotted to their husbandmen, or churls.—*Jacob.*

OUTLAW.—**ANGLO-SAXON,** *utlaga, utlath*, = out of the law. (Co. Litt. 122b; Schmid. Ges. der Angl. Gloss. See **UTLAWRY**.) "In the reign of king Ælfred, and until a good while after the Conquest, no man could have been outlawed but for felony, the punishment whereof was death. . . . But in the beginning of the reign of king Edward the third, it was resolved by the judges, for avoyding of inhumanity and of ellusion of Christian blood, that it should not be lawfull for any man, but the sherife only (having lawfull warrant therefore) to put to death any man outlawed, though it were for felony. Co. Litt. 128 b.

A person who is put out of the protection of the law by judgment of outlawry (*q. v.*) See **WAIVED**.

OUTLAW, (in a mortgage). 24 Mich. 18.

— (in a statute). 46 Ala. 118, 137.

OUTLAWED, (defined). 37 Me. 389.

OUTLAWRY.—

§ 1. In England, where an indictment has been found against a person and summary process (see **PROCESS**) proves ineffectual to compel him to appear, process of outlawry may be issued, though in practice this is rarely or never done. The preliminary process of issuing successively writs of *venire facias ad resp.*, *distringas*, and *capias ad resp.* (see those titles), is first gone through; and if the defendant still eludes justice, a writ of *exigent* is awarded, by which the sheriff is required to proclaim the defendant and call him on five county court days, (this means the sheriff's County Court; see **COUNTY COURT**, § 8,) one after another, upon pain of outlawry. A writ of proclamation is also issued and executed. If the defendant still fails to appear, judgment of outlawry is pronounced by one of the coroners for the county. Judgment may also be signed in the crown office, and a *capias utlagatum* (*q. v.*) issued. Arch. Cr. Pl. 88.

§ 2. The effect of outlawry seems to be that the outlaw becomes liable to imprisonment, forfeits his property to the crown, (his goods immediately and his chattels real and the profits of

his land upon office found; see **OFFICE**.) is incapacitated from maintaining civil proceedings, and becomes subject to other disabilities. 3 Bl. Com. 284; First Rep. Com. Law Comm. (1851) 5; Dan. Ch. Pr. 52. See **ATTAINDER**.

§ 3. **Civil proceedings.**—Formerly there were also two kinds of outlawry in civil proceedings, one, called "outlawry on mesne process," which was used to compel a defendant to appear in an action, the other, called "outlawry after judgment," which was a means of execution to enforce a judgment. (*Id.*; Chit. Gen. Pr. 1309; Com. Dig. *Utlagary*; Co. Litt. 259 b; Cro. Jac. 577.) The former was abolished by the Common Law Procedure Act, 1852, § 24; the latter by the Civil Procedure Acts Repeal Act, 1879.

OUTPARTERS.—Stealers of cattle.—*Cowell.*

OUTPUTERS.—Such as set watches for the robbing any manor-house.—*Cowell.*

OUTRAGE AND INDIGNITY, (defined). 44 Iowa 314, 320.

OUTRIDERS.—Bailiffs-errant, employed by sheriffs or their deputies, in England, to ride to the extremities of their counties or hundreds, to summon men to the county or hundred court. —*Wharton.*

OUTSTANDING CROP, (in a statute). 53 Ala. 474.

OUTSTANDING LEGAL ESTATE.—Where land is vested in a trustee or mortgagee, the *cestui que trust*, or mortgagor, can only deal with the beneficial or equitable interest, the legal estate in the land being, as it is said, outstanding in the trustee, or mortgagee. If the trust or mortgage is satisfied without the legal estate being re-vested in the *cestui que trust*, or mortgagor, and he contracts to sell the land, the purchaser may require him to get in the legal estate, *i. e.* to obtain a reconveyance of it from the trustee, or mortgagee. Dart Vend. & P. 281, 501.

OUTSTANDING TERMS.—See **TERM**.

OUTSUCKEN MULTURES.—Quantities of corn paid by persons voluntarily grinding corn at any mill to which they are not thirled or bound by tenure. See **INSUCKEN MULTURES**.

OUTWARD MARK OR SHOW OF BUSINESS, (in a covenant). 10 Ch. D. 747.

OUTWARDS, OR INWARDS, (in a statute). 11 East 684; 12 *Id.* 442.

OUVERTURE DES SUCCESSIONS.—In the French law, denotes the right of succession which arises to one upon the

death, whether natural or civil, of another. Such successor must not be either as yet unconceived, or a child *non viable*, or one civilly dead; and he must also be clear of certain moral delinquencies, for which see Code Civil 727. Bastards, in case their parent leaves legitimate offspring, have one-third of the goods which, as a legitimate child, they would have received; and if the parent leaves no legitimate offspring but ascendants or collaterals (being brothers or sisters), then one-half; and if the parent leaves neither legitimate offspring nor ascendants nor collaterals (being brothers or sisters), then three-fourths; and in case of a total failure of inheritable relations, then the whole. The widow surviving takes the succession where the parent leaves no inheritable relations or bastards, and failing her, the state.—*Brown*.

OVELTY.—A kind of equality of service in subordinate tenures.—*F. N. B.* 36. See **OWELTY**.

OVER.—In conveyancing, the word “over” is used to denote a contingent limitation intended to take effect on the failure of a prior estate. Thus, in what is commonly called the “name and arms clause” (*q. v.*) in a will or settlement, there is generally a proviso that if the devisee fails to comply with the condition the estate is to go to some one else. This is a limitation or gift over. *Wats. Comp. Eq.* 1110.

OVER, (in a statute). 47 Iowa 507; 2 Allen (Mass.) 107–110.

OVER DUE, (when a promissory note is not). 4 Barn. & C. 325.

OVER INSURANCE.—See **DOUBLE INSURANCE**.

OVERCYTED, or OVERCYHSED.—Proved guilty or convicted.—*Blount*.

OVERDRAW—OVERDRAFT.—To overdraw one’s account is to obtain more money from one’s bank or depositary, by bill, check, or order, than the state of the account authorizes.—*Abbott*. An overdraft is (1) the act of overdrawing, and (2) the instrument by which such act is effected.

OVERDRAW, (defined). 4 Zab. (N. J.) 478, 484.

OVERDUE.—

§ 1. **Bill of exchange.**—A bill of exchange is overdue when the time fixed for its payment is passed. Such a bill is subject to the peculiar rule, that any one taking it takes it subject to the equities of prior holders. *Ex parte Swan*, L. R. 6 Eq.

344; *Ex parte Oriental Commercial Bank*, L. R. 5 Ch. 358. See **BILL OF EXCHANGE**, § 6; **EQUITY**, § 11.

§ 2. **Ship.**—An overdue ship is one of which news has not been received for such a time as to give rise to the presumption or probability that she has been lost. See *Stubley v. Imperial Marine Ins. Co.*, 1 Q. B. D. 507.

OVERFLOWING LANDS, (right of, is a servitude). 4 McCord (S. C.) 96.

OVERHERNISSA.—Contumacy or contempt of court. *Leg. Æthel. c.* 25.

OVERLOOK AND CORRECT, (in letters-patent). 2 Bos. & P. 31.

OVERPLUS.—SURPLUS (*q. v.*)

OVERPLUS OF MY ESTATE, (in a will). 12 Mod. 596; 4 T. R. 605.

OVERREACHING CLAUSE.—In a resettlement, a clause which saves the powers of sale and leasing annexed to the estate for life created by the original settlement, when it is desired to give the tenant for life the same estate and powers under the resettlement. The clause is so called because it provides that the resettlement shall be overreached by the exercise of the old powers. If the resettlement were executed without a provision to this effect, the estate of the tenant for life and the annexed powers would be subject to any charges for portions, &c., created under the original settlement. 3 Dav. Prec. Conv. 489. See **RESETTLEMENT**.

OVERRULE.—To set aside the authority of a former decision made in an independent cause. Where a decision is annulled by a further decision by a higher court in the same cause or action, the higher court is said to “reverse” the lower.

OVERSAMESSA.—A forfeiture for contempt or neglect in not pursuing a malefactor. 3 Inst. 116.

OVERSEER OF PUBLIC ROAD, (turnpike company is not). 3 Heisk. (Tenn.) 120.

OVERSEER OF THE HIGHWAYS, (is a township officer). 2 Gr. (N. J.) 473.

OVERSEERS.—

§ 1. **Of the poor.**—Overseers of the poor are persons whose duty it is to see to the relief and management of the poor. See **GUARDIANS OF THE POOR**; **RATE**; **VESTRY**.

§ 2. **Of a will.**—Formerly it seems to have been common, in England, for a testator after appointing an executor to appoint an overseer

who had no power to intermeddle with the administration, but only to counsel, persuade and advise the executor. (Wms. Ex. 233.) This is now obsolete.

OVERSEERS, (may include "church wardens"). 7 Man. & G. 494.

OVERSEERS OF HIGHWAYS.

—See COMMISSIONERS OF HIGHWAYS.

OVERSEERS OF THE POOR, (are public officers). 77 N. C. 494.

OVERSEWENESSE.—See OVERHERNISSA.

OVERSMAN.—In the Scotch law, an umpire.

OVERSIGHT, (in a will). Yelv. 73.

OVERT.—Open.

OVERT ACT.—

§ 1. Treason.—An open act, or one consisting of something stronger than mere words, and evidencing a deliberate intention in the mind of the person doing it. The phrase is chiefly used in the law of treason, it being a rule that a treasonable intention is not punishable unless it is evidenced by some overt act. Thus, to provide weapons or ammunition for the purpose of killing the king, or to assemble and consult on the means of doing so, is an overt act of treason; but the mere speaking of words is not an overt act. 4 Bl. Com. 79.

§ 2. Conspiracy.—The term is also used in the law of criminal conspiracy to signify any act done by conspirators in pursuance of their intention; the unlawful agreement of which the conspiracy consists constitutes an overt act. Arch. Pr. 972; R. v. Mulcahy, L. R. 8 H. L. 306.

OVERT ACT, (in a statute). 5 How. (U. S.) 215, 228.

OVERT WORD.—An open, plain word, not to be misunderstood.—Cowell.

OVERTURE.—An opening; a proposal.

OVRAGES, or OUVRAGES.—Day's works.

OVRES.—Acts, deeds, or works. 8 Co. 131.

OWE—OWING.—To owe a sum of money is to be under an obligation to pay

it either at once or at some future time, and such a debt is said to be "owing" as opposed to "payable." *In re Stockton, &c., Co.*, 2 Ch. D. 103. See DUE.

OWE ON A BILL OF EXCHANGE, (in a statute). 3 Barn. & Ald. 1, 7.

OWEL.—Equal.

OWELTY.—NORMAN-FRENCH: *ouwele*, equal; from Latin, *equalis*. Brit. 187 b.

§ 1. Owelty of exchange.—Where an exchange of two pieces of land of unequal value is made, and a sum of money or some other compensation is given by the owner of the less valuable land to the owner of the other land, this compensation is said to be given for owelty of exchange, i. e. to equalize the value.

§ 2. Owelty of partition.—So, where a partition is made of property which cannot be divided into shares of equal value (as where two houses descend to coparceners, one being worth ten shillings, the other twenty shillings per annum, Litt. § 251,) the partition may be made on the terms of the person to whom the property of greater value is allotted giving something by way of owelty of partition to the other, (Co. Litt. 169b;) as in the case supposed, by the parcener to whom the house worth twenty shillings per annum is allotted granting a rent-charge of five shillings per annum to the other, (Litt. § 251,) or paying him a lump sum. Wats. Comp. Eq. 460; 2 White & T. Lead. Cas. 432.

OWLERS.—Persons who carried wool, &c., to the sea-side, by night, in order that it might be shipped off contrary to law.—*Jacob*.

OWLING.—The offense of transporting wool or sheep out of the kingdom. Abolished by 5 Geo. IV. c. 107.

OWN, (in a deed). 30 Conn. 98, 101.

OWN ACCOUNT, (in a covenant). 1 Lev. 272.

OWN DWELLING PLACE OR SHOP, (in statute respecting markets and fairs). L. R. 7 Q. B. 690.

OWN OCCUPATION, (in a will). 1 Marsh. 61.

OWN PREMISES, (in a statute). 55 Mo. 67.

OWN PROPER HAND BEING THEREUNTO SUBSCRIBED, HIS, (in a declaration). 2 Campb. 451; 3 Car. & P. 335; Moo. & M. 182.

OWN USE AND BENEFIT, FOR HER, (in a will). 5 Madd. Ch. 491.

OWN USE AND BENEFIT, FOR HIM, (in a will). 6 Serg. & R. (Pa.) 446; 3 Bro. Ch. 388 n.; 4 Madd. Ch. 409; 1 Swanst. 547.

OWN USE. HER, (equivalent to "her sole and separate use"). 4 Rawle (Pa.) 68.

OWNED AND OCCUPIED, (in a statute). 36 Wis. 73.

OWNED BY THEM, (in a deed). 5 Cow. (N. Y.) 509, 512.

OWNED OR OCCUPIED, (in a statute). 37 Conn. 36; 9 Am. Rep. 299.

OWNER—OWNERSHIP.—

§ 1. Ownership is the most extensive right allowed by law to a person, of dealing with a thing to the exclusion of all other persons, or of all except one or more specified persons. It is, therefore, a right *in rem*. (See RIGHT.) Ownership is essentially indefinite in its nature, but in its most absolute form it involves the right to possess and use or enjoy the thing, the right to its produce and accessions, and the right to destroy, encumber, or alien it; or, as the civilians express it, ownership gives the *jus utendi, fruendi, et abutendi*; but the exercise of these rights may be restricted in various manners, and the owner may part with them or limit them in favor of other persons. So long, however, as the grantees have only definite rights of user over the thing, and the original owner retains an indefinite right, he is still owner; but if he parts with the indefinite right and retains only a definite one, (e. g. a right of way, in the case of land,) he ceases to be owner. As to ownership generally, see Aust. Juris.; Mark. El. L.; Holl. Jur.

§ 2. **Subjects of ownership.**—Ownership may exist either in corporeal or incorporeal things. Thus, a man may be owner of an annuity, patent, or copyright, as well as of land or furniture.

With reference to the right of user and alienation, ownership is either absolute (*dominium plenum*), or not (*minus plenum*).

§ 3. **Absolute.**—Ownership is said to be "absolute" when it is subject only to those restrictions which are imposed by law on all owners, and are therefore implied in the idea of ownership. These restrictions may arise from the duties of the owner of the thing towards his neighbors and the world at large, which forbid him to make it hurtful or dangerous to those who happen lawfully to come in contact with it. (See NATURAL RIGHTS; NUISANCE.) Restrictions on alienation exist in the case of persons under disability,

and are also imposed by the rule against perpetuities and the Mortmain Acts (*q. v.*) In the English law, absolute ownership can only exist in chattels, as all land is subject theoretically to the obligations of tenure; but practically the fee-simple in land gives absolute ownership. (See ESTATE, § 2; FEE, § 2; TENURE.) But in America, absolute ownership exists in land as well as chattels. See ALLODIAL.

§ 4. **Restricted.**—Restricted ownership occurs where either concurrent or successive rights of user are vested in other persons than the owner; thus land may be subject to easements or rights of common (*q. v.*), or the right of user possessed by the owner for the time being may be restricted by the fact that he has only a limited interest in it, as in the case of a joint tenant, tenant for life, or lessee. See WASTE.

§ 5. **Modes of ownership.**—Ownership may be divided among several persons in various manners, so that each is owner to a limited extent, either successively, *i. e.* one after another, or concurrently, *i. e.* at the same time. These divisions are called "modes of ownership."

Hence we obtain the following classes of owners:

§ 6. **Unlimited—Limited.**—As to its duration, ownership may be (1) absolute or unlimited (*dominium perpetuum*), as in the case of an estate in fee-simple, or (2) limited (*d. temporalis*), *i. e.* liable to determine at a certain time or on the happening of a given event, as in the case of a lessee or tenant for life.

§ 7. **Present—Deferred.**—As to the time of enjoyment, ownership may be present, as in the case of an estate in possession, or deferred, as in the case of an estate in reversion or remainder. See ESTATE, § 9.

§ 8. **Sole.**—Ownership is called "sole," or "several," where one person only is entitled to the thing at the same time. Concurrent ownership, where several persons are entitled to the thing at the same time, takes the form either (1) of co-ownership, or (2) of nominal and beneficial ownership.

§ 9. **Co-ownership.**—Co-ownership occurs where several persons are entitled

to the possession, user, and benefit of one thing, *pro indiviso*, no one being entitled to any specific part of it, and the right of user of each being subject to a similar right in the others; as in the case of joint tenancy, coparcenary, and tenancy in common (*q. v.*)

§ 10. **Nominal and beneficial ownership.**—Nominal and beneficial ownership occurs where two persons are owners in respect of one thing, although one of them either cannot derive any benefit from it at all, or has only exactly defined rights over it, while the other has the real benefit of the thing. Each is considered owner for certain purposes. Thus, a person (A.) may be owner of a thing as against all the world, except another person (B.), while with regard to that person he may have no rights of ownership at all, being bound, by virtue of a personal relation between them, to allow him to have the use and profits of the property, or even to deal with the property as he may direct. As the rules of the common law only recognize A.'s rights to the property and ignore those of B., A. is called the "legal owner," while B. is called the "equitable owner," because his rights are only recognized by virtue of the doctrines of equity. The legal owner is the nominal owner; the equitable, the beneficial owner. (*See* EQUITY; MORTGAGE; TRUST.) So, if the owner of land grants a lease of it for one thousand years, his ownership becomes practically nominal, while the lessee acquires the beneficial ownership.

§ 11. As to general and special, ordinary and privileged ownership, *see* PROPERTY. *See, further*, as to ownership, ESTATE; INTEREST; RIGHT; TITLE.

OWNER, (defined). 65 Me. 591; 38 Mich. 168; 1 C. E. Gr. (N. J.) 383; 7 Vr. (N. J.) 181.

— (a tenant for life or years, or from year to year, is). 11 R. I. 258.

— (equivalent to "proprietor"). 64 Mo. 112, 123; Cro. Jac. 362.

— (when includes "trustee"). Wilberf. Stat. L. 125.

— (as applied to lands). 1 Gilm. (Ill.) 236; 2 *Id.* 182.

— (in insurance policy). 1 Wend. (N. Y.) 575.

— (in assessment act). 36 Ohio St. 26.

— (in act relative to nuisances). L. R. 7 Q. B. 418.

OWNER, (as used in the homestead law). 38 Ill. 9.

— (in public health act). L. R. 6 Q. B. 567.

— (in statute as to assessments). L. R. 3 Q. B. 714.

— (in act to prevent trespassing). 3 Scam. (Ill.) 258.

— (in mechanics' lien law). 17 Minn. 342; 10 C. E. Gr. (N. J.) 281; 11 Barb. (N. Y.) 9; 1 Duer (N. Y.) 675; 9 N. Y. 435; 2 E. L. Smith (N. Y.) 681; 11 N. Y. Leg. Obs. 216; 2 Ohio St. 114; 4 *Id.* 101.

— (in a statute). 22 Wall. (U. S.) 262; 23 *Id.* 35; 44 Conn. 291, 298; 3 Kan. 499; 11 Cush. (Mass.) 433; 12 *Id.* 54, 59; 2 Gray (Mass.) 185, 189; 9 Mete. (Mass.) 562; 114 Mass. 466; 57 N. H. 110, 113; 11 C. E. Gr. (N. J.) 425; 12 Abb. (N. Y.) Pr. 129; 7 Barb. (N. Y.) 498, 506; 25 *Id.* 52; 45 *Id.* 407; 13 Hun (N. Y.) 553; 4 N. Y. 66; 26 Pa. St. 238; 1 Q. B. D. 65.

OWNER AND PROPRIETOR, (are not appropriate words to describe an estate in fee-simple or fee-tail in a petition for dower). 2 Ill. 314.

OWNER OF A HOMESTEAD, (who is not). 20 Ohio St. 473.

OWNER OF LANDS, (in a statute). 10 Pet. (U. S.) 23; 17 Wend. (N. Y.) 322; 2 Watts (Pa.) 440.

OWNER OF LANDS AND BUILDINGS, (in a statute). L. R. 10 Q. B. 245.

OWNER OF STRUCTURE, (in metropolitan building act). 4 Q. B. D. 75.

OWNERS OR OCCUPIERS, (in a statute). L. R. 8 Ex. 8.

OWNERS OR PROPRIETORS, (in a statute). 6 Nev. & M. 340.

OWNER'S RISK, (defined). 4 Keyes (N. Y.) 108.

— (in a contract). 3 Q. B. D. 195.

OWNING, (in a statute). 8 Pet. (U. S.) 49.

OXFIELD.—A restitution anciently made by a hundred or county for any wrong done by one that was within the same.—*Lamb. Arch.* 125.

OXGANG, or OXGATE.—Fifteen acres of land. Corrupted, in the north, to *osken*.—*Kehn Domes. Illustr.*

OXGANG, (defined). Shep. Touch. 93.

OYER.—In old common law practice, a defendant is said to demand or crave "oyer" of a deed pleaded by the plaintiff when he asks that it shall be read to him, the generality of defendants in early times being incapable of reading themselves; the record then generally goes on to set out the deed in full as having been read to the defendant. This copy or setting out of the deed is also called the "oyer." Litt. § 365; Co. Litt. 35b, 121b; 3 Bl. Com. 299. *See* PROPERTY.

OYER AND TERMINER.—In English law, the commission of oyer and

terminer is the commission which is issued to certain judges of the High Court and other persons as their authority to "inquire, hear, and determine" all treasons, felonies, and misdemeanors committed within the county into which they are sent. This commission only authorizes them to proceed upon an indictment found at the same assizes, for they must first "inquire" by means of the grand jury, before they can "hear and determine" by the help of the petty jury. (*See* JURY.) Their power to try other prisoners is conferred by the commission of gaol delivery (*q. v.*) (4 Steph. Com. 313; Jud. Act, 1873, §§ 16, 37.) In some of the United States, the higher criminal courts are called "Courts of Oyer

and Terminer." (*See* ASSIZE, § 2; CENTRAL CRIMINAL COURT) "Oyer and terminer" is old French for "hear and determine." Britt. 10a.

OYER DE RECORD.—A petition made in court that the judges, for better proof's sake, will hear or look upon any record.—*Cowell*.

OYEZ.—Hear ye. The introduction to any proclamation or advertisement given by the public criers, as on the opening of court. It is pronounced *oh! yes!* In American courts the phrase "Hear ye" is generally used.

OYSTER, (included in the word "fish") 58 Me. 164.

OYSTER LAYING, (in a lease and release). 4 Barn. & C. 485, 497.

OYSTER SPAT, (defined). 12 Ad. & E. 13, 21.

P.

P. O.—An abbreviation of public officer; also of post office. Under the 7 Geo. IV. c. 46, § 4, certain banking companies sue and are sued by their "Public Officer."

P. A. G. E.—A toll for passage through another's land.

PACARE.—To pay.

PACATIO.—Payment.—*Mat. Par. A. D.* 1248.

PACE.—A measure of length containing two feet and a half. The geometrical pace is five feet long; the common pace is the length of a step, the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.—*Wharton*.

PACEATUR.—Let him be freed or discharged.

Paci sunt maxime contraria vis et injuria (Co. Litt. 161): Violence and injury are the things chiefly hostile to peace.

PACIFICATION.—The restoration of peace between two hostile nations; re-establishment of public tranquility.

PACK.—To pack a jury is, by contrivance and improper influence, to secure upon the panel jurors predisposed to find in favor of a particular party.

PACK OF WOOL.—A horse load, which consists of seventeen stone and two pounds, or two hundred and forty pounds weight. (*Fleta* l. 1, c. xii.)—*Cowell*.

PACKAGE, SCAVAGE, BAIL-AGE, and PORTAGE.—Duties charged in the port of London on the goods imported and exported by aliens, or by denizens being the sons of aliens. The act 3 and 4 Wm. IV. c. 66, authorized the lords of the treasury to purchase these duties from the city. This was done at an expense of about £140,000, and the duties were abolished.—*McCull. Dict.*

PACKAGE, (defined). 1 Hughes (U. S.) 529; 44 Ala. 468; 2 Daly (N. Y.) 454, 480.

PACKED PARCELS.—The name for a consignment of goods, consisting of one large parcel made up of several small ones (each bearing a different address), collected from different persons by the immediate consignor (a carrier), who unites them into one for his own profit, at the expense of the railway by which they are sent, since the railway company would have been paid more for the carriage of the parcels singly than together. *See* Hodg. Railw. (5 edit.) 540, n. (g); and G. W. Ry. Co. v. Sutton, L. R. 4 II. L. 226.

PACKET, (defined). 1 Pick. (Mass.) 56.

— (in act of congress). 4 Op. Att.-Gen. 276.

PACKING A JURY, (defined). 12 Conn. 263, 289.

PACT.—A contract, bargain, covenant. Pacts are of many varieties—being either (1) *nuda pacta*, i. e. pacts without any consideration to clothe them with the attributes of a contract; or (2) *vestita pacta*, i. e. pacts clothed with such a consideration. And again, pacts may be (3) *pacta adjecta*, i. e. pacts added to a contract, and in that

case either (a) *adjecta ex continenti, i. e.* as part and parcel of the contract and *contemporaneously* therewith; or (b) *adjecta ex intervallo, i. e.* not contemporaneously with, but some interval of time after, the contract proper; and an action may be supported upon pacts made contemporaneously, but only a defense upon pacts made after an interval of time.—*Brown*.

Pacta conventa quæ neque contra leges neque dolo malo inita sunt omnimodo observanda sunt (D. 2, 14, 27, § 4): Agreements which are neither illegal nor founded on fraud must in all respects be observed.

Pacta dant legem contractui (Hob. 118): The stipulations of parties constitute the law of the contract.

Pacta privata juri publico derogare non possunt (7 Co. 23): Private compacts cannot derogate from public right.

This maxim operates to check that other maxim, viz., *modus et conventio vincunt legem* (q. v.)

Pacta quæ contra leges constitutiones que vel contra bonos mores sunt nullam vim habere, indubitati juris est (Cod. 2, 3, 6): It is undoubted law that agreements have no force which are contrary to law or the constitutions, or to good morals.

Pacta quæ turpem causam continent non sunt observanda (D. 2, 14, 27, § 4): Agreements founded on an immoral consideration are not to be observed.

PACTION.—A bargain, or covenant. In international law, a kind of contract between nations.

PACTIONAL.—By way of bargain or covenant.

Pactis privatorum juri publico non derogatur: Private contracts cannot derogate from public right.

PACTITIOUS.—Settled by covenant.

Pacto aliquod licitum est, quod sine pacto non admittitur (Co. Litt. 166): By special agreement things are allowed which are not otherwise permitted.

FACTUM.—An agreement; a pact (q. v.)

PACTUM CONSTITUTÆ PECUNIÆ.—In the civil law, an agreement by which a person appointed to his creditor a certain day, or a certain time, at which he promised to pay; or an agreement by which a person promises to pay a creditor.—*Wharton*.

PACTUM DE NON PETENDO.—In the civil law, an agreement made between a creditor and his debtor that the former will not

demand from the latter the debt due. By this agreement the debtor is freed from his obligation. This is not unlike the *covenant not to sue* of our common law, as to which, see *Leake Cont.* 501.—*Wharton*.

PACTUM DE QUOTA LITIS.—In the civil law, an agreement by which a creditor promised to pay a portion of a debt difficult to recover, to a person who undertook to recover it.

PADDER.—A robber; a foot highwayman.

PADDOCK.—A small inclosure for deer or other animals.

PAGARCHUS.—A petty magistrate of a *pagus* or little district in the country.

PAGUS.—A county.—*Jacob*.

PAID DEBTS AND LEGACIES, (in a will). 2 Atk. 341.

PAID IN CURRENCY THAT IS AT PAR, (in a promissory note). 37 Ga. 324; 63 N. C. 147.

PAID, NOW SO, (in a deed). 1 Dowl. & Ry. 211.

PAID OR PAYABLE, (in a will). L. R. 2 Eq. 414.

PAID THEREOUT, (in a will). 3 T. R. 356.

PAID, TO BE, (in a will). 4 Rawle (Pa.) 115; 2 Bro. P. C. 254; 3 Mau. & Sel. 518; 13 Ves. 113.

PAINE FORTE ET DURE.—See **PRINCE FORTE ET DURE**.

PAINS AND PENALTIES.—Acts of parliament to attain particular persons of treason or felony, or to inflict pains and penalties beyond or contrary to the common law, to serve a special purpose. They are in fact new laws, made *pro re nata*. It is an incident of such bills that persons who are to be affected by them are entitled by custom to be heard at the bar of the house in person or by counsel. But on a bill to disfranchise the borough of St. Albans, this claim was disallowed.—*Wharton*.

PAINTINGS, (in carrier's act). 3 Ex. D. 121, 124.

PAIRING-OFF.—A practice which is said to have originated in the time of Cromwell, whereby two members of the House of Commons of opposite opinions agree to absent themselves from voting during a given period. It is still in frequent use in legislative assemblies both in England and America. This system is known by the name of "pairs," and members acting under this arrangement are thence said to "pair off" upon any question in which a division of the house takes place during their absence.

PAIS—PAYS.—The country. A trial per pais signifies "a trial by the country," or, as it is

more commonly called, "by jury." An assurance by matter *in pais* is an assurance transacted between two or more private persons *in pais* (in the country), i. e. upon the very spot to be transferred. Matter *in pais* seems to signify "matter of fact," probably so called because matters of fact are mostly triable by the country; e. g. estoppels *in pais* are estoppels by conduct, as distinguished from estoppels by deed or by record. See ESTOPPEL, § 4; IN PAIS.

PAIS, CONVEYANCES IN.—Ordinary conveyances between two or more persons *in the country*, i. e. upon the land to be transferred.

PALACE COURT.—An inferior court of the queen at Westminster. Abolished by 12 and 13 Vict. c. 101.

PALAGIUM.—A duty to lords of manors for exporting and importing vessels of wine at any of their ports.—*Jacob*.

PALATINE.—Possessing royal privileges. See COUNTY PALATINE.

PALATINE COURTS formerly were the Court of Common Pleas at Lancaster, the Chancery Court of Lancaster, and the Court of Pleas at Durham, the second of which alone now exists. (See the respective titles.) The Courts of the County Palatine of Chester were abolished by Stat. 11 Geo. IV., and 1 Will. IV. c. 70. (3 Bl. Com. 77 *et seq.*, notes (6) and (7).) Palatine courts were formerly exempt from the control and process of the courts at Westminster. See COUNTY PALATINE.

PALFRIDUS.—A palfrey; a horse to travel on.

PALING-MAN.—A merchant denizen, or one born within the English pale.—*Cowell*.

PALLIO COOPERIRE.—An ancient custom, where children were born out of wedlock, and their parents afterwards intermarried. The children, together with the father and mother, stood under a cloth extended while the marriage was solemnized. It was in the nature of adoption. The children were legitimate by the civil, but not by the common law.—*Jacob*.

PALMATA.—In old records, a handful.—*Blount*.

PALMER'S ACT.—The Stat. 19 and 20 Vict. c. 16, enabling a person accused of a crime committed out of the jurisdiction of the Central Criminal Court, to be tried in that court.

PALMISTRY OR OTHERWISE, (in vagrancy act). 2 Ex. D. 208.

PAMPHLET.—A small book, bound in paper covers, usually printed in the octavo form, and stitched.

PANDECTS.—The books of the civil law compiled by Justinian are so called. The word literally translated means a universal collection

or compilation of passages, and denotes the *universality* of the subjects treated of in the *Corpus Juris Civilis*; whereas, the word *Digest*, which in England is the more common of the two words, means a methodical arrangement, and denotes the *method or order* which is observed in the arrangement of the same compilation. See CORPUS JURIS CIVILIS; DIGEST, § 1.

PANDOXATOR.—In old records, a brewer.

PANDOXATRIX.—A woman that brews and sells ale.—*Cowell*.

PANEL.—"Pannell is an English word, and signifieth a little part; for a pane is a part, and a pannell is a little part, as a pannell of wainscot, a pannell of a saddle, and a pannell of parchment wherein the jurors' names be written and annexed to the writ." Co. Litt. 158b.

§ 1. Panel generally means the list, made up by the sheriff, or other proper officer, of the persons who have been summoned to serve as jurors for the trial of all actions at a particular sittings (Sm. Ac. 121); but the term is also applied to the list of special jurors returned by the sheriff for the trial of a particular action after the process of nominating and reducing (*q. v.*) See IMPANEL; JURY.

§ 2. In the Scotch law, the accused person in a criminal trial.—*Bell Dict.*

PANEL, (challenge to, defined). 40 Cal. 586.

PANIER.—An attendant or domestic, who waits at table and gives bread (*panis*), wine, and other necessary things to those who are dining. The phrase was in familiar use amongst the Knights Templars, and from them has been handed down to the learned societies of the Inner and Middle Temples, their modern representatives, whose buildings once belonged to that distinguished order, and who have retained a few of their customs and phrases. "From the time of Chancer to the present day, the lawyers have dined together in the ancient hall, as the military monks did before them, and the rule of their order requiring two and two to eat together, and all the fragments to be given in brotherly charity to the domestics, is observed to this day, and attendants at table in the dining hall are still called 'paniers.'"—*Brown*.

PANNAGE.—A common of pannage is the right of feeding swine on mast and acorns at certain seasons in a commonable wood or forest. (10t. Com. 25; Wms. Com. 168.) It does not prevent the owner of the wood from lopping and cutting down the trees in the ordinary course of management. *Chilton v. Corporation of London*, 7 Ch. D. 562.

Pannagium est pastus porcorum, in nemoribus et in silvis, ut puta, de glandibus, &c. (1 Buls. 7): A pannagium is a pasture of hogs, in woods and forests, upon acorns, and so forth.

PANNEL.—See **PANEL**.

PANNELLATION.—The act of impaneling a jury.

PANNUS.—A garment made with skins. *Fleta* l. 2, c. xiv.

PAPER —

§ 1. It is the practice, in England, to exhibit in each court a "paper" or list of the business to be transacted, to enable the parties to know when their presence will be required. A solicitor is bound to attend in court (personally or by a clerk) when a case in which he is concerned is in the paper, and he is entitled to charge a fee for so doing. Rules of Court (Costs), August, 1875.

§ 2. In the Queen's Bench Division there are numerous varieties of papers, the chief of which are—the crown paper, or list of cases on the crown side of the court; the new trial paper, or list of cases in which rules *nisi* for new trials have been granted; the special paper, or list of demurrers, special cases, appeals from inferior courts, &c.; and the peremptory paper, or list of cases ordered to stand over to a particular day in the next sittings. All these papers contain business to be heard by divisional courts, and hence the days on which such business is transacted were formerly called "paper days." The days on which the courts will sit at *Nisi Prius* are given in the sittings paper, while the list of actions for trial is called the "cause list." See *Arch. Pr.* 171, 350; *Tidd Pr.* 505.

PAPER. (made from animal fibre). *Wilberf. Stat.* L. 134.

PAPER BLOCKADE.—The state of a line of coast proclaimed to be under blockade in time of war, when the naval force on watch is not sufficient to repel a real attempt to enter.

PAPER BOOKS.—(1) Formal collections or copies of the pleadings and written proceedings in a cause, prepared for the use of the judges, upon the hearing of an argument. (2) In proceedings on appeal or error in a criminal case, copies of the proceedings with a note of the points intended to be argued, delivered to the judges by the parties before the argument. *Arch. Cr. Pl.* 205.

PAPER-CREDIT.—Credit given on the security of any written obligation purporting to represent property.

PAPER CURRENCY. (in a statute). 2 *Nott & M.* (S. C.) 519.

PAPER-DAYS.—In each of the English common law courts certain days were appointed in each term, called "Special Paper-days,"

because the court on those days proposed to hear the cases entered in the Special Paper for argument. There were also fixed in the Queen's Bench, Crown Paper-days for disposing of business on the crown side of the court. (1 *Chit. Arch. Pr.* (12 edit.) 177.) On these days no motions were heard. Since the coming into force of the Judicature Acts arrangements similar to those above mentioned continue to be made.

PAPER MEDIUM. (is not money). 1 *McCord* (S. C.) 115.

PAPER MONEY.—Bank-notes, bills of exchange, and promissory notes.

PAPER OFFICE.—An ancient office in the palace of Whitehall, in England, where all the public writings, matters of state and council, proclamations, letters, intelligences, negotiations of the queen's ministers abroad, and generally all the papers and dispatches that pass through the offices of the secretaries of state are deposited. Also, an office or room in the Court of Queen's Bench where the records belonging to that court are deposited; sometimes called "Paper-mill." —*Wharton*.

PAPERS ON APPEAL. (in allowance for printing). 4 *Minn.* 552.

PAPISM.—Popery.

PAPIST.—One who adheres to the communion of the Church of Rome. The word seems to be considered by the Roman Catholics themselves as a nickname of reproach, originating in their maintaining the supreme ecclesiastical power of the pope. —*Wharton*.

PAPIST LIVINGS.—Those in the gift of Roman Catholics. The right to present to them is vested and secured to the Universities of Oxford and Cambridge, according to the several counties in which they are situated.

PAR.—State of equality; equal value. Bank-notes, bills of exchange, stocks, and the like, are at par when they sell for their nominal value; *above* par, or *below* par, when they sell for more or less. —*Bowrier*.

Par in parem imperium non habet (*Jenk. Cent.* 174): An equal has no power over an equal.

PAR OF EXCHANGE.—The par of the currencies of any two countries means the equivalence of a certain amount of the currency of the one in the currency of the other, supposing the currency of both to be of the precise weight and purity fixed by their respective mints.

The exchange between the two countries is said to be at par when bills are negotiated on this footing, *i. e.* when a bill for £100 drawn on London sells in Paris for 2520 frs., and *vice versa*. (Bowen Pol. Ec. 321. See 11 East 267.)—*Bouvier*.

PAR VALUE, (of a bond, what is). 2 Hill (N. Y.) 172; 8 Paige (N. Y.) 527.

PARACHRONISM.—Error in the computation of time.

PARACIUM.—The tenure between parceners, viz.: that which the youngest owes to the eldest without homage or service.—*Domesd.*

PARAGE—PARAGIUM.—An equality of blood or dignity; but more especially of land, in the partition of an inheritance between coheirs; more properly, however, an equality of condition among nobles, or persons holding by a noble tenure. Thus, when a fief is divided among brothers, the younger hold their part of the elder by parage, *i. e.* without any homage or service.—*Cowell*. Also the portion which a woman may obtain on her marriage.—*Wharton*.

PARAGRAPH.—A part or section of a statute, pleading, affidavit, &c., which contains one article, the sense of which is complete.—*Wharton*.

PARALLEL, (in a patent). 2 App. Cas. 423.

PARALLEL LINES, (in common speech, defined). 32 Cal. 219.

PARALOGY.—False reasoning.

PARAMOUNT.—

§ 1. Title.—Paramount means superior. Thus, "title paramount" means a superior title, (Co. Litt. 173b;) for instance, if A. purports to convey to B. land which really belongs to C, and C. ejects B. from the land, B. is said to be evicted by title paramount, meaning a title superior to that granted to him by A.

§ 2. Seignory.—In the law of tenure, if A. holds land in fee of B., and B. holds the same land in fee of C., then C. is the lord paramount, and he has the seignory paramount, as opposed to A. the tenant paravail, and B. the mesne, whose seignory is called "the mesnalty" (*q. v.*) Litt. § 583.

For the etymology of the word, see PARAVAIL.

PARAPHERNA.—Goods brought by the wife to her husband in addition to her *dos* or portion.

PARAPHERNALIA.—GREEK: *παράψυλα*, those things which a bride brings (*φέρειν*) over and above (*παρα*) her dower, (Just. Cod. V. 14. 1. 8.) hence *bona paraphernalia*. Tipping v. Tipping, 1 P. Wms. 729.

Such apparel and ornaments given to a married woman as are suitable to her condition in life, and are expressly given to her to be worn as ornaments of her person only. (Snell Eq 297) They differ from property held by the wife for her separate use in that the husband may dispose of them during his life and that they are liable for his debts, while they differ from her ordinary chattels in that the husband has no power to dispose of them by will, so that if she survives him she is entitled to them, subject to his debts. Wms. Pers. Prop. 432; Macq. Husb. & W. 157.

PARAPHERNALIA, (defined). Reeve Dom. Rel. 37; Love Wills 36; Toll. Ex. 229.

— (what are). 5 Wheel. Am. C. L. 290; 2 Atk. 77; 3 Id. 394, 395; Pr. Ch. 26.

— (what are not). 4 Ired. (N. C.) L. 301.

— (when may be taken to satisfy debts). 3 Atk. 370; 2 Eq. Cas. Abr. 156; Freem. 304; Pr. Ch. 295.

PARAPHERNAUX, BIENS.—In the French law, all the wife's property which is not subject to the *régime dotal* is called by this name; and of these the wife has the entire administration; but she may allow the husband to enjoy them, and in that case he is not liable to account.—*Brown*.

PARASCEVE.—The sixth day of the last week in Lent, particularly called "Good Friday." It is a *dies non juridicus*.

PARASITUS.—A domestic servant.—*Blount*.

PARASYNEXIS.—In the civil law, a conventicle, or unlawful meeting.

PARATITULA.—In the civil law, an abbreviated explanation of some titles or books of the Code or Digest. See PANDECTS.

PARATUM HABEO.—I have ready. One of the returns to the writ of *capias ad satisfaciendum* (*q. v.*)

PARAVAIL.—Notwithstanding Coke, who says that "the tenant of the land is called tenant *par avails*, because it is presumed that he hath avails and profit by the land" (Second Inst. 296), it seems clear that *paravail* is compounded of *par* and the French *aval*—below, and *paramount* of *par* and *amount*—above. Littré Dict. s. *vu*, *amount* and *aval*.

§ 1. Inferior or subordinate. Thus, where A. is indebted to B., and B. is indebted to C., B. is the primary debtor and A. is the sub-debtor or "debtor paravail." Man. Exch. Pr. 8, n. (o), citing Keilway 187.

§ 2. The term is chiefly used, in the English law, with reference to the tenure of estates in land, a tenant paravail being a tenant who holds lands in fee of another and has no tenant who holds of him, as opposed to a mesne lord and a lord paramount (*q. v.*)

PARCEL.—

§ 1. In the law of real property, parcel signifies a part or portion of land. Thus, every piece of copyhold land forms parcel of the manor to which it belongs: that is to say, so far as the freehold is concerned, the copyholds belong to the lord, and form part of his lands, although his beneficial interest in them is comparatively small, being subject to the customary estates of the tenants. See COPYHOLD; DEMESNE; MANOR.

§ 2. Spoken of chattels, a small bundle or package.

PARCEL, (defined). 6 Daly (N. Y.) 171.
 ——— (twenty ears of wheat is). 2 T. R. 255.
 ——— (in pleading). 2 Ld. Raym. 1529.

PARCEL MAKERS.—Two officers in the Exchequer who formerly made the parcels of the escheators' accounts, wherein they charged them with everything they had levied for the sovereign's use within the time of their being in office, and delivered the same to the auditors, to make up their accounts therewith.

PARCEL OF LAND, (in a statute). 38 Iowa 141.

PARCEL, OR PACKAGE, (in United States Rev. Stat., § 3437). 1 Hughes (U. S.) 529.
 ——— (in carrier's act). L. R. 9 Ex. 67.

PARCELLA TERRÆ.—A parcel of land.

PARCELS.—In a conveyance, lease or other deed dealing with property, that part which follows the operative words is called "the parcels." It contains the description, either expressly or by reference, of the property dealt with, and in the case of lands generally begins with some such words as "All that piece or parcel of land," &c. Sometimes the full description is contained in a recital or in a schedule to the deed, with a reference to a map drawn on the deed. 1 Dav. Prec. Conv. 79, 85. See ABSTRACT; ABUTTALS; DEED; OPERATIVE PART; PREMISES.

PARCELS, BILL OF.—An account of the items composing a parcel or package of goods, transmitted with them to the purchaser.

PARCENARY.—The tenure of lands by parceners.

PARCENER.—The old-fashioned equivalent for "coparcener" (*q. v.*) Litt. § 241.

PARCHMENT.—Skins of sheep dressed for writing, so called because invented at Pergamus, in Asia Minor, by King Eumenes, when paper, which was in Egypt only, was prohibited by Ptolemy to be transported into Asia. It is sometimes still used for deeds; and was formerly used for writs.

PARCO FRACTO.—See DE PARCO FRACTO.

PARCUS.—(1) A park (*q. v.*) (2) A pound for stray cattle.—*Spel. Gloss.*

PARDON.—

§ 1. Pardon is where the government releases a person from the punishment which he has incurred for some offense. A pardon may be granted, in England, either (1) before or during a prosecution, in which case it may be pleaded in bar, or (2) after conviction, in which case it may be pleaded in arrest of judgment or in bar of execution, so that the offender is discharged from punishment. Some offenses, however, cannot be pardoned, *e. g.* a common nuisance while it remains unredressed; and a pardon cannot be pleaded to a legislative impeachment. In America, a pardon can only be granted after conviction.

§ 2. A pardon is granted, in England, by warrant under the great seal or under the sign manual; in America, by warrant or certificate signed by the executive, or, in some States, the board of pardons. It may be either free (absolute) or conditional, *i. e.* the executive may annex to it a condition on the performance of which the operation of the pardon will depend. 4 Steph. Com. 463, 404. See AMNESTY; RESERVE.

PARDON, (defined). 7 Pet. (U. S.) 150; 14 Vr. (N. J.) 241; Phil. (N. C.) 1. 242.

——— (effect of). 1 Ld. Raym. 39; 12 Mod. 119.

——— (includes "amnesty"). 5 Otto (U. S.) 153.

——— (includes "release"). 28 Pa. St. 297.
 ——— (a *nolle prosequi* does not amount to). 2 Mass. 172.

——— (power to grant, includes power to grant conditional pardon). 1 Park. (N. Y.) Cr. 47.

PARDON, CONDITIONAL, (when accepted by a convict is a contract). 1 Edm. (N. Y.) Sel. Cas. 235.

PARDONERS.—Persons who carried about the pope's indulgences, and sold them to any who would buy them.

PARDONS, (in United States constitution). 18 How. (U. S.) 307.

PARENS.—A parent.

Parens est nomen generale ad omne genus cognationis (Co. Litt. 80): Parent is a name general for every kind of relationship.

PARENS PATRIÆ.—Father of the country. The sovereign, as *parens patriæ*, has a kind of guardianship over various classes of persons who, from their legal disability, stand in need of protection, such as infants, idiots and lunatics.

PARENT, (defined). 65 Ga. 55, 56.

— (in divorce law). L. R. 1 P. & D. 231, 493.

— (in a statute). 7 Halst. (N. J.) 260; 1 Murph. (N. C.) 336; Add. (Pa.) 214; 6 Binn. (Pa.) 255; 6 Serg. & K. (Pa.) 340.

— (in a will). 7 Ves. 530.

PARENT AND CHILD.—

§ 1. The relation of parent and child is not one which is much interfered with by the law, almost the only duties arising from it which are capable of legal enforcement being those of maintenance and education. Every parent is bound to provide necessaries for his children if he is able to do so and they are unable to support themselves, (2 Steph. Com. 283, citing Stat. 43 Eliz. c. 2; 5 Geo. I. c. 8; 59 Geo. III. c. 12; 5 Geo. IV. c. 83; 4 and 5 Will. IV. c. 76; 7 and 8 Vict. c. 101; 11 and 12 Vict. c. 110; 31 and 32 Vict. c. 122, § 37;) and is bound to send them to school. On the other hand, the children of a poor person not able to work are bound to maintain him or her if they are able to do so. (3 Steph. Com. 56.) These reciprocal obligations of maintenance are only enforceable as public duties, and not by the person liable to be maintained. See **MAINTENANCE**; **POOR**.

§ 2. As regards third persons, the relation gives the parent the right of protecting the person and property of his child, and *vice versâ*, (2 Steph. Com. 292, 296,) while in some cases the child is by a fiction considered as the servant of the parent. See **SEDUCTION**; see, also, **BASTARD**; **GUARDIAN**; **INFANT**.

PARENTELA, or **DE PARENTELA SE TOLLERE**.—A renunciation of one's kindred and family. This was, according to ancient custom, done in open court, before the judge, and in the presence of twelve men, who made oath that they believed it was done for a

just cause. We read of it in the laws of Henry I. After such abjuration, the person was incapable of inheriting anything from any of his relations, &c.—*Encycl. Lond.*

PARENTHESIS.—Part of a sentence occurring in the middle thereof, and enclosed between marks like (), the omission of which part would not injure the grammatical construction of the rest of the sentence.—*Wharton*.

PARENTHESIS, (words of a will in, effect of). 3 Atk. 8, 9.

PARENTICIDE.—One who murders a parent.

PARERGON.—(1) One work executed in the intervals of another; a subordinate task. (2) The name of a work on the canons, in great repute, by Ayliffe.

PARES.—A person's peers or equals; as the jury for trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the sovereign's vassals, or the lords themselves, judged each other in the sovereign's courts. 3 Bl. Com. 349.

PARES CURIÆ.—Peers of the court. Vassals who were bound to attend the lord's court.

PARI DELICTO.—In equal fault. See **IN PARI DELICTO**.

PARI MATERIA.—On a like subject. See **IN PARI MATERIA**.

PARI PASSU.—By the same gradation. Equally, without preference.

PARI RATIONE.—For the like reason; by like mode of reasoning.

Paria copulantur paribus (Bacon): Like things unite with like.

Paribus in materiis eadem est ratio: In like subject-matters the rule of law should be the same.

This is the maxim underlying the application of the decisions of courts to new cases, the *ratio decidendi* of the previous decisions being applicable whenever the circumstances of the new case correspond, and being excluded in whole or in part or being modified when these circumstances are different.

Paribus sententiis reus absolvitur (4 Inst. 64): Where the opinions are equal, a defendant is acquitted.

PARIES.—A wall. D. 50, 16, 157.

PARIES COMMUNIS.—A common wall; a party wall. D. 29, 2. 39.

PARISH.—

§ 1. In English law.—That district which is committed to the charge of one parson or vicar, or other minister of the Church of England, having cure of souls therein. A parish is, however, a division for civil, as well as for ecclesiastical purposes; thus, the collection and application of the poor-rate is parochial. (1 Steph. Com. 117.) By modern statutes provision is made for the subdivision of parishes into districts or parishes for ecclesiastical, poor law and taxation purposes, and for the amalgamation of detached portions of parishes. *Id.* 22; 2 *Id.* 751; Phillim. *Ecc. L.* 2167; the principal acts are, 58 Geo. III. c. 45; 6 and 7 Vict. c. 37; 7 and 8 Vict. c. 94; 19 and 20 Vict. c. 104; 39 and 40 Vict. c. 61; Foster v. Medwin, 5 C. P. D. 87; Taxes Management Act, 1880, § 36 *et seq.* See CHAPEL, § 2; ECCLESIASTICAL COMMISSIONERS; OVERSEERS; PERAMBULATION; POOR LAW.

§ 2 A place not included in a parish is called "extra-parochial." Such places are, however, now in substantially the same position for civil purposes as if they were parishes, *i. e.* so far as regards the collection and application of rates, registration of voters, &c. 1 Steph. Com. 119 *n.*; 3 *Id.* 44 *n.*; Stats 20 Vict. c. 19; 25 and 26 Vict. c. 61. See TITHES.

§ 3. In American law.—In some of the New England States, a parish is a division of the people of a town, constituting a quasi-corporation, and composed of members of a particular church. (See 2 Mass. 501; 1 Pick. (Mass.) 91.) In Louisiana "parish" means the same as "county" in the other States.

PARISH, (defined). 1 Pick. (Mass.) 91, 97; 8 East 175; 1 Bl. Com. 111.

— (may be known by several corporate names). 7 Mass. 441.

— (powers of a Congregational Church as distinct from). 9 Mass. 297.

— (in poor law). Wilberf. Stat. L. 298.

PARISH APPRENTICES.—Persons who are bound out, in England, by the overseers of parishes, or by the guardians of the poor. The children of poor persons may be apprenticed out by the overseers, with consent of two justices, and by the guardians without such consent, till twenty-one years of age, to such persons as are thought fitting; who are no longer, however, compellable to take them. 7 and 8 Vict. c. 101, § 13; and see 14 and 15 Vict. c. 11, and 17 and 18 Vict. c. 104, §§ 141–145; and 2 Steph. Com. (7 edit.) 230; 3 *Id.* 54 *n.*

PARISH CLERK.—This office is of extreme antiquity; next in dignity to the clergy, says Leland. Witty Fuller likens him, in his Church history, to the bat—half bird, half beast—yet so as there is more in him of the former than the latter; his clergy wings outweigh the laic or mouse part of him. He is the

mouthpiece of the congregation says Hooker; mouth of mouths, according to Bishop Bull; connecting link between the minister and people; cousin, twice removed, to the vicar; note, that the curate is betwixt. Bellwether to the flock, says Bishop Andrews, speaking it in honor. Spelman doubts whether he is not entitled to a portion of the lesser tithes—from which expressions we may gather in what kind of estimation antiquity has held this function.—*Encycl. Lond.* He is generally appointed by the incumbent, but by custom may be chosen by the inhabitants; his appointment may be by word of mouth only, and his remuneration depends altogether upon the custom of the particular parish. (58 Geo. III. c. 45; 59 Geo. III. c. 134; 19 and 20 Vict. c. 104.) He may be suspended or removed by the archdeacon for misconduct or neglect. (7 and 8 Vict. c. 59.) The company of parish clerks is the most ancient in the city of London, yet they stand at the bottom of the list, and have neither livery nor the privilege of making their members free of the city. (See 2 Steph. Com. (7 edit.) 700.)—*Wharton.*

PARISH CLERK, (defined). 1 Bl. Com. 395.

PARISH CONSTABLE.—A petty constable exercising his functions within a given parish.—*Mosley & W.*

PARISH OFFICERS.—Church wardens, overseers and constables.

PARISH OFFICERS, (defined). Burr. 1185; 7 East 182.

PARISH OR PLACE, (in liquor act). L. R. 7 C. P. 378; L. R. 1 Q. B. 489; 5 *Id.* 391.

PARISH PRIEST.—The parson; a minister who holds a parish as a benefice. If the predial tithes are appropriated, he is called "rector;" if impropriated "vicar."

PARISH REGISTERS.—See BILL OF MORTALITY; REGISTER.

PARISHIONER.—One that belongs to a parish. Parishioners are a body politic for many purposes—as to vote at a vestry if they pay scot and lot; and they have the sole right to raise taxes for their own relief, without the interposition of any superior court. They may make by-laws to mend the highway, and to make banks to keep out the sea, and for repairing the church, and making a bridge, &c., or any such thing for the public good.—*Encycl. Lond.*

PARISHIONER, (defined). 3 Atk. 577.

— (in charity scheme). 1 Ch. D. 160; L. R. 20 Eq. 606.

PARITOR.—A beadle; a summoner to the courts of civil law.

Parium eadem est ratio, idem jus: Of things equal, the reason is the same, and the same is the law.

PARIUM JUDICIUM.—Judgment of one's peers. The right of trial by one's peers;

particularly, the right of a commoner to trial by a jury of his peers; hence the right of trial by jury.

PARK.—

§ 1. An inclosure, in or near a city or town, set apart for recreation and exercise.

§ 2. In English law.—In the technical sense of the word a park is the same as a chase (*q. v.*) except that it is enclosed, while a chase is always open. (Manw. 7; Co. Litt. 233 a.) A park in the popular sense of the word, namely, one erected without lawful warrant, is sometimes called a "nominative park." (2 Inst. 199.) The parks forming part of the demesnes of the crown are called "royal parks." Stat. 35 and 36 Vict. c. 15; *see, also*, the Public Parks, Schools and Museums Act, 1871. *See* DEMESNE, § 5.

PARK, (defined). 40 Barb. (N. Y.) 65, 69; 36 N. Y. 120, 124.

PARK-BOTE.—To be quit of enclosing a park or any part thereof.

PARKER.—A park-keeper.

PARLE HILL, or PARLING HILL.

—A hill where courts were anciently held.—*Cowell.*

PARLIAMENT.—The parliament of the United Kingdom of Great Britain and Ireland is composed of the king or queen and the three estates of the realm, viz., the lords spiritual, the lords temporal, and the commons. These several powers collectively make laws that are binding upon the subjects of the British empire, and also separately enjoy privileges and exercise functions peculiar to each. (May Parl. Pr. 2; Cox Inst. 8; Co. Litt. 109 b; 1 Bl. Com. 146; 2 Steph. Com. 318.) For details *see* HOUSE OF LORDS; HOUSE OF COMMONS; PREROGATIVE; *also* ACT OF PARLIAMENT; BOROUGH; CONTEMPT OF PARLIAMENT; IMPEACHMENT; KNIGHT, § 2.

PARLIAMENTARY AGENTS.—Persons (usually solicitors) who transact the technical business involved in passing private bills through the houses of parliament. They are required to sign a declaration and give security for compliance with the rules of the House of Commons. May Parl. Pr. 725.

PARLIAMENTARY COMMITTEE.

—A committee of members of the House of Peers, or of the House of Commons, appointed by either house for the purpose of making inquiries, by the examination of witnesses or otherwise, into matters which could not be conveniently inquired into by the whole house. Not only any bill, but any subject that is brought under the consideration of either house, may, if the house thinks proper, be referred to a committee; and when the inquiry is ended, the committee, through their chairman, make a report to the house of the result. All private bills, such as bills for railways, canals, roads, or other undertakings, in which the public is concerned, are referred to committees of each house before they

are sanctioned by that house. Their reports are not absolutely binding upon the house. Great weight is always attached to them, and the house seldom reverses their decision upon such matters. As to the power of such committees to administer oaths to witnesses, *see* 21 and 22 Vict. c. 78, and 34 and 35 Vict. c. 3.

PARLIAMENTARY TAXES.—Such taxes as are imposed directly by act of parliament, *i. e.* by the legislature itself, as distinguished from those which are imposed by private individuals or bodies under the authority of an act of parliament. Thus, a sewers rate, not being imposed directly by act of parliament, but by certain persons termed commissioners of sewers, is not a parliamentary tax; whereas the income tax, which is directly imposed, and the amount also fixed, by act of parliament, is a parliamentary tax.

PARLIAMENTUM DIABOLICUM.

—A parliament held at Coventry, 38 Hen. VI., wherein Edward, Earl of March (afterwards King Edward IV.), and many of the chief nobility were attainted, was so called; but the acts then made were annulled by the succeeding parliament.—*Jacob.*

PARLIAMENTUM INDOCTORUM,

or INDOCTUM.—The lack-learning parliament. A parliament held 6 Hen. IV., wherein, by special precept to the sheriffs in their several counties, no lawyer, or person skilled in the law, was to come.—*Jacob.*

PARLIAMENTUM INSANUM.—A

parliament assembled at Oxford, 41 Hen. III., so styled from the madness of their proceedings, and because the lords came with armed men to it, and contentions grew very high between the king, lords, and commons, whereby many extraordinary things were done.—*Jacob.*

PARLIAMENTUM RELIGIOSORUM.

—In most convents there has been a common room into which the brethren withdrew for conversation; conferences there being termed "parliamentum." Likewise, the societies of tw, temples, or inns of court, call that assembly of the benchers or governors, wherein they confer upon the common affairs of their several houses a "parliament."—*Jacob.*

PAROCHE—PAROCHIA.—A parish.

Parochia est locus quo degit populus alicujus ecclesiæ (5 Co. 67): A parish is a place in which the population of a certain church resides.

PAROCHIAL.—Belonging to a parish. *See* POOR LAWS.

PAROCHIAL, (defined). 2 Barn. & Ald. 206.

PAROCHIAL CHAPELS.—Places of public worship in which the rites of sacrament and sepulture are performed.

PAROCHIAL RATES, (equivalent to "taxes of the parish"). Wilberf. Stat. L. 264.

PAROCHIAN.—A parishioner.

PAROL.—Parol literally means "verbal" or "oral." In early times few persons could write, and therefore, when a document was required to record a transaction, the parties put their seals to it and made it a deed. Transactions of less importance were testified by word of mouth or by parol, and this use of "parol," to signify the absence of a deed, remained after simple writing without sealing had come into use. *Wms. Real Prop* 149.

Parol, in its technical sense, as applied to a legal transaction, means that it has been effected without the solemnity of a deed. Therefore, an assignment of chattels, or a contract, or a lease, which is either verbal or reduced into a writing not under seal, is called a "parol" assignment, contract or lease. (*See CONTRACT*, § 1.) Similarly in the law of evidence, where the contents of a document are brought before the court, either orally or by means of a copy, this is called adducing "parol evidence" (*q. v.*) of its contents. (*Best Ev.* 311.) Parol evidence also sometimes means "extrinsic evidence." *See EVIDENCE*, §§ 8, 14.

PAROL AGREEMENTS.—Such as are either by word of mouth or are committed to writing, but are not under seal. The common law draws only one great line between things under seal and not under seal. *See 2 Steph. Com.* (7th edit.) 55.

PAROL AGREEMENTS, (defined). 3 *Johns.* (N. Y.) *Cas.* 60.

PAROL ARREST.—Any justice of the peace may, by word of mouth, authorize any one to arrest another who is guilty of a breach of the peace, in his presence.

PAROL DEMURRING.—In many real actions brought by or against an infant under the age of twenty-one years, and also in actions of debt brought against him, as heir to any deceased ancestor, either party might suggest the non-age of the infant, and pray that the proceedings might be deferred till his full age, or that the infant might have his age, and that "the parol might demur," *i. e.* that the pleadings might be stayed; and then they would not have proceeded till the infant's full age, unless it was apparent that he could not be prejudiced thereby. This parol demurring was abolished by the Stat. 11 Geo. IV. and 1 Will. IV. c. 47, as to proceedings under that statute, being chiefly decrees for the sale of real estate to pay debts. The parol demurring is not to be confounded with a parol demurrer, which was a demurrer put in for the first time at the trial or hearing of the action.—*Brown.* *See DEMURRER*, § 2.

PAROL EVIDENCE.—Testimony by the mouth of a witness. It is a general rule that oral evidence cannot be substituted for a written instrument, where the latter is required by law, or to give effect to a written instrument, defective in any particular essential to its validity; nor contradict, alter or vary a written instrument required by law, or agreed upon by the parties, as the authentic memorial of the facts which it recites. But parol evidence is admissible to defeat a written instrument on the ground of fraud, mistake, &c., or to apply it to its proper subject, or, in some instances, as ancillary to such application to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases, the parol evidence does not usurp the place of written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect. (3 *Stark. Ev.* 752.) The general rule with regard to the admission of parol evidence to explain the meaning of, or to add to, vary, or alter the express terms of a deed, is, that it shall not be admitted, except: (1) where, although the deed is clearly enough expressed, some ambiguity arises from extrinsic circumstances; (2) where the language of a charter or deed has become obscure from antiquity; (3) where the grant is uncertain, owing to a want of acquaintance with the grantor's estate; (4) where it is important to show a different consideration consistent with, and not repugnant to, that stated in the deed itself; (5) where it becomes necessary to show a different time of delivery from that at which the deed purports to have been made; (6) where it is sought to prove a customary right not expressed in the deed, but not inconsistent with any of its stipulations; or, lastly, where fraud or illegality in the formation of the deed is relied on to avoid it. If a clause in a deed be so ambiguously or defectively expressed that a court of justice cannot, even by reference to the context, collect the meaning of the parties, it would be void on account of uncertainty.—*Wharton.*

PAROL EVIDENCE, (when admissible). *Sax.* (N. J.) 393; *South.* (N. J.) 452; 2 *Whart. (Pa.)* 75.

PAROL EVIDENCE, (when not admissible). 6 Halst. (N. J.) 174; Penn. (N. J.) 936; 1 Hill (N. Y.) 185; 14 Wend. (N. Y.) 26, 116; 2 Whart. (Pa.) 453, 471.

PAROL LEASE.—A verbal lease. See 29 Car. II. c. 3, § 2.

PAROL SUBMISSION, (to arbitrators). 12 Mass. 134; 1 N. H. 68; 15 Wend. (N. Y.) 99.

PAROLE.—The promise made by a prisoner of war, when he has leave to go anywhere, of returning at a time appointed, or not to take up arms till exchanged.

PARRICIDE.—The same as patricide (*q. v.*) Our laws, unlike the ancient laws, distinguish in no respect between parricide, killing a husband, wife, or master, and simple murder.

PARS.—A part; a party to a deed, action, or legal proceeding.

PARS ENITIA.—See ENITIA PARS.

PARS GRAVATA.—A party aggrieved.

PARS PRO TOTO.—The name of a part used to represent the whole; as the roof for the house, ten spears for ten armed men, &c.

PARS RATIONABILIS.—A reasonable part. The ancient division of a man's goods into three equal parts, of which one went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or, if he died without a wife, he might then dispose of one moiety, and the other went to his children, and so *à converso*; but if he died without either wife or issue, the whole was at his own disposal. The shares of the wife and children were called their "reasonable parts;" and the writ *de rationabili parte bonorum* was given to recover them. This law has been altered by imperceptible degrees, and the deceased may now by will bequeath the whole of his goods and chattels. (2 Steph. Com. (7 edit.) 180, 183, 292.)—*Wharton*.

PARS VISCERUM MATRIS.—Part of the bowels of the mother, *i. e.* an unborn child.

PARSON.—

§ 1. "*Persona ecclesiæ*, is one that hath full possession of all the rights of a parochial church." (1 Bl. Com. 384.) He is called "parson," *persona*, because he personates or represents the church. He is a corporation sole. *Id.*; Co. Litt. 300a. See CORPORATION, § 2.

§ 2. "*Persona impersonata*, parson imparsonne, is the rector that is in possession of the church parochiall, be it presentative or impropriate, and of whom the church is rull." (Co. Litt. 300b.) In other words, the rector of a presentative advowson is not complete parson until

he has been inducted (*q. v.*) (*Id.* 119b), while in the case of an impropriate advowson the rector is perpetual parson. 2 Steph. Com. 678. See ADVOWSON; RECTOR; VICAR.

PARSON IMPARSONNEE.—See PARSON, § 2.

PARSON MORTAL.—A rector instituted and inducted for his own life. But any collegiate or conventional body, to whom a church was forever appropriated, was termed *persona immortalis*.

PARSONAGE.—(1) The benefice of a parish. (2) The parson's house.

PARSONAGE, (in a grant). 1 Chit. Gen. Pr. 164.

PARSONAGE OR VICARAGE, (does not include "curacy"). Wilberf. Stat. L. 249.

PART.—A share or portion. To take part in an enterprise, conveyance, or action, means to engage in it. Formerly "part" was used as the opposite of "counterpart," in respect to covenants executed in duplicate, but now each copy is called a "counterpart."

PART, (defined). 54 Ala. 238.

— (necessarily imports less than the whole). 3 Halst. (N. J.) 79.

— (in a statute). 2 Barb. (N. Y.) 330.

PART AFORESAID, HER, (in a will). 2 Barn. & C. 680.

PART AND PERTINENT.—In the Scotch law of conveyancing, formal words equivalent to the English "appurtenances."—*Bell Dict.*

PART, MY, (in a will). 9 Pick. (Mass.) 35; 4 Bulstr. 127; 1 T. R. 105; 2 Prest. Est. 177.

PART, MY HALF, (in a will). 11 East 160, 163.

PART, MY ONE-HALF, (in a will). 2 Barn. & C. 680.

PART OF A VOLUME, (in copyright law). 10 Ch. D. 247.

PART OF THE LAND, (a verdict in ejectment for). 5 Watts (Pa.) 79.

PART PAYMENT, as the phrase implies, is payment of part of a debt. Such a payment (independently of its effect in satisfying the debt *pro tanto*) has a legal effect (1) in dispensing with the necessity of writing in contracts for the sale of goods under the Statute of Frauds (*q. v.*), (Chit. Cont. 373); and (2) in reviving a debt (or rather the balance of a debt) which would otherwise be barred by the Statute of Limitations, payment of part being evidence of a fresh promise to pay. (*Id.* 764.) **PART**

payment by one joint debtor does not revive the debt against the others. *Wms. Pers. Prop.* 364.

PART PERFORMANCE.—*See* PERFORMANCE, § 3.

PARTAGE—This is, in French law, the partition of English law, and is demandable as of right.

PARTAKER OF MY ESTATE, (in a will). *Penn.* (N. J.) 967, 970.

Partem aliquam recte intelligere nemo potest, antequam totum, iterum atque iterum, perlegerit (3 Co. 53): No one can rightly understand any part until he has read the whole again and again.

PARTES FINIS NIHIL HABUERUNT, &c.—The parties to the fine had nothing, &c. An exception taken against a fine levied. 3 Co. 88.

PARTIAL ACCUMULATION, (in a statute). 9 *Ves.* 127, 132.

PARTIAL INSANITY.—Mental unsoundness always existing, although only occasionally manifest; in fact, monomania. *Dew v. Clark*, 3 *Add* 79; *Waring v. Waring*, 6 *Moo P. C.* 341; *Smith v. Tibbett*, *L. R.* 1 *P. & M.* 398.

PARTIAL LOSS.—*See* ABANDONMENT, § 1; *LOSS*, § 1.

PARTIAL LOSS, (defined). 4 *Mass.* 548; 14 *Wend.* (N. Y.) 399, 472; 2 *Steph. Com.* 132, 133. — (what is). 25 *Ohio St.* 50.

PARTIBILITY.—*See* GAVELKIND.

PARTICEPS.—(1) A part taker; a sharer. (2) Formerly, a part owner.

PARTICEPS CRIMINIS, or FRAUDIS.—A partner in crime, or fraud; an accomplice (*q. v.*)

PARTICIPATE, (in a will). *L. R.* 6 *Ch.* 696.

Participes plures sunt quasi unum corpus in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nulla parte sit defectus (Co. Litt. 4): Many parceners are as one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be a defect in no part.

PARTICULA.—A small piece of land.

PARTICULAR AVERAGE.—Every kind of expense or damage, short of a total loss, which regards a particular con-

cern, and which is to be borne by the proprietors of that concern alone. A loss borne wholly by the party upon whose property it takes place. 2 *Phil. Ins.* § 1422 *et seq.* *See* *L. R.* 1 *C. P.* 535 and 2 *C. P.* 357. *See, also, AVERAGE*, § 2.

PARTICULAR AVERAGE, (defined). 3 *Bosw.* (N. Y.) 385, 395.

PARTICULAR CREDIT, (of a witness, how impeached). 5 *Abb.* (N. Y.) *Pr. N. s.* 232.

PARTICULAR CUSTOM.—A custom affecting the inhabitants of some particular district only. *See* CUSTOM, § 4.

PARTICULAR ESTATE.—A limited interest in lands or tenements, as distinguished from the absolute fee-simple therein, is usually so termed; and he who holds or enjoys such a limited interest therein is thence sometimes called the "particular tenant." Thus, if A. has the absolute fee-simple in certain lands, and he demises them to B. for a term of seven years, or life, the legal interest which B. would thus acquire therein would be called the "particular estate" with reference to A.'s estate in fee-simple; *i. e.* it would be a particle or portion carved out of A.'s fee-simple. *See* ESTATE, § 9.

PARTICULAR LIEN.—A right of retaining possession of a chattel from the owner, until a certain claim upon it be satisfied. A specific lien. *See* LIEN, § 4.

PARTICULAR LIEN, (defined). 21 *Wend.* (N. Y.) 14.

PARTICULAR SERVICES, (of physician as witness). 59 *Ind.* 1, 13, 15, 18.

PARTICULAR STATEMENT, (in a statute). 25 *Iow.* (N. Y.) *Pr.* 58.

PARTICULAR TENANTS, ALIENATION BY.—When they conveyed by a feoffment, fine or recovery, a greater estate than the law entitled them to make, a forfeiture ensued to the person in immediate remainder or reversion. As if a tenant for his own life aliened by feoffment for the life of another or in tail or in fee, these being estates which either must or may last longer than his own, his creating them was not only beyond his power, and inconsistent with the nature of his interest, but was also a forfeiture of his own particular estate to him in remainder or reversion, who was entitled to enter immediately.

The same law which is thus laid down with regard to tenants for life held also with respect to all tenants of mere chattel interests.

This forfeiture differed materially from forfeiture by breach of condition in deed, for in that

case the reversioner is in as of his former seisin, and consequently not only the estate of the tenant himself, but all interests derived out of it (even though derived before the forfeiture) were defeated; but in case of such forfeiture by particular tenants, all legal estates by them created (as if tenant for twenty years grant a lease for fifteen), and all charges by him lawfully made on the lands, would have been good and available in law. But fines and recoveries having been abolished, and a feoffment having no longer a tortious operation, (8 and 9 Vict. c. 106, § 4,) a tenant, by creating a larger interest than he has in the property, does not incur a forfeiture, for such a creation is now void as to the excess, and good for his own interest. (1 Steph. Com. (7 edit.) 463.)—*Wharton*.

PARTICULARITY, in a pleading, affidavit, or the like, is the allegation of particulars or details. An excess or deficiency of particularity in a pleading is equally a defect; the latter entitles the opposite party either to an order for particulars, or to an order requiring the other party to amend his pleading. See **AMENDMENT**.

PARTICULARLY, (in construction of will, substituted for "specifically"). 8 Com. Dig. 493.

PARTICULARS.—See **BILL OF PARTICULARS**.

PARTICULARS OF BREACHES AND OBJECTIONS.—In an action brought in England, for the infringement of letters-patent, the plaintiff is bound to deliver with his declaration (now with his statement of claim) particulars (*i. e.* details) of the breaches which he complains of. (15 and 16 Vict. c. 83, § 41.) And the defendant in an action for infringement, and the prosecutor in any proceedings by *scire facias* to repeal letters-patent, are bound to deliver with the plea (now statement of defense) or declaration (as the case may be) particulars of any objections to the validity of the patent on which they mean to rely at the trial. *Id.*; Chit. Gen. 1st r. 1465.

PARTICULARS OF CRIMINAL CHARGES.—A prosecutor, when a charge is general, is frequently ordered to give the defendant a statement of the acts charged, which is called, in England, the "particulars" of the charges.

PARTICULARS OF DEMAND OR SET-OFF.—

§ 1. **Queen's Bench Division**.—In an action in the English Queen's Bench Division (following the practice of the old common law courts), where the pleadings of either party contain a general statement on some material subject, the opposite party is frequently entitled to particulars, *i. e.* a detailed statement of the matters intended to be covered by his opponent's pleading, so that he may be acquainted with the precise

nature of the allegation, and enabled to prepare his answer to it. There is another reason for obtaining particulars, namely, that they tie up the party in his proof, and prevent him from taking advantage, as he otherwise might, of very general and comprehensive statements in his pleading. (Sm. Ac. 105.) Particulars are generally obtained by summons. Day C. L. P. Acts 417.

§ 2. **Chancery Division**.—In actions in the Chancery Division there is no fixed practice as to particulars, and they are rarely asked for. Some of the judges have laid down the rule that particulars will only be ordered in "common law actions," *i. e.* in such actions as, before the Judicature Act, could only have been brought in a common law court. *Augustinus v. Nerinckx*, 16 Ch. D. 13.

§ 3. **County Court**.—In every English County Court action (unless it is for the recovery of a sum not exceeding forty shillings) the plaintiff must, on entering the plaint, file particulars showing the nature of his demand or cause of action, and the nature of the relief claimed: a copy is served with the summons. County Court Rules (1875) vii. 1.

§ 4. **Bankruptcy**.—In bankruptcy, before a creditor can issue a debtor's summons (*q. v.*), he must file an affidavit stating (*inter alia*) that an account in writing of the particulars of his demand has been sent to the debtor: another copy of the particulars of demand is served with the debtor's summons. Robs. Bankr. 140, 141; Bankr. Rules (1870) 18, 19, 20, Forms 2, 3.

PARTICULARS OF ESCAPE.—In English practice, the defendant is entitled to a statement of the escape sued for with the precise day of such escape. (2 Chit. Archb. Pr. (12 edit.) 1201.) These particulars ought now to appear in the plaintiff's statement of claim.

PARTICULARS OF PREMISES, &c.—A defendant, if there was any reasonable doubt as to the lands, &c., for which an ejectment was brought, might take out a summons before a judge, and obtain an order requiring the plaintiff to give him a bill of particulars. The court or a judge might also order the defendant to give a particular of the premises for which he defended. 2 Chit. Archb. Pr. (12 edit.) 1019.

PARTICULARS OF RESIDENCE.—Where a plaintiff was not known to a defendant, the latter might call for particulars of his profession, &c., and of his place of abode from the opposite attorney, and if he refused to give it, he was guilty of contempt, and the court or a judge might stay proceedings. C. L. P. Act (1832), §§ 7, 169.

PARTICULARS OF SALE.—When property such as land, houses, shares, reversions, &c., is to be sold by auction, it is usually described in a document called the "particulars," copies of which are distributed among intending bidders. They should fairly and accu-

ately describe the property. *Dart Vend. & P.* 113; 1 *Dav. Prec. Conv.* 511. *See* CONDITIONS OF SALE.

PARTIES.—

§ 1. A person who takes part in a legal transaction or proceeding is said to be a party to it. Thus, if an agreement, conveyance, lease, or the like, is entered into between A. and B., they are said to be parties to it; and the same expression is often, though not very correctly, applied to the persons named as the grantors or releasors in a deed-poll. 1 *Dav. Prec. Conv.* 37. *See* DEED, § 2.

§ 2. **Instrument.**—Parties to formal instruments are divided into classes or parts according to their estates or interests in the subject-matter of the transaction; thus, if A. mortgages land to B., C. and D., and they all agree to sell it to E. and F., the conveyance, according to the English rule as to the mortgagee's title, would be made between B., C. and D. of the first part, (because the legal estate, which is part of the title to the land, is vested in them jointly,) A. of the second part, (because he has the equity of redemption, which is the remainder of the title to the land,) and E. and F. of the third part, because the whole title is to be conveyed to them. In most of the States the above conveyance would be made by A. directly to E. and F. subject to the mortgage. As to the distinction between parties and privies, *see* PRIVY.

§ 3. **Legal proceedings.**—In a legal proceeding, the parties are the persons whose names appear on the record. In Chancery practice, those persons who merely have the right of attending the proceedings are sometimes called "*quasi*-parties," to distinguish them from the parties in the strict sense, namely, the plaintiffs and defendants. *See* NOTICE OF DECREE.

§ 4. **Action.**—In an action, the parties are divided into plaintiffs and defendants, and, under the English practice, if necessary, they are distinguished according to the manner in which they were introduced into it. Thus, if R. W. brings an action against O. S. and J. B., and the defendant O. S. in his defense raises a counter-claim against the plaintiff R. W. and also against

the defendant J. B. and a third person J. W., the parties to the action are divided thus (*Jud. Act, 1875, App. (C.), Form No. 14*):

Between R. W. - - -	Plaintiff,
and	
O. S. and J. B. - - -	Defendants.
(By original action.)	
And between the said O. S. - - -	Plaintiff,
and	
The said R. W. and J. B. and J. W. - - -	Defendants.
(By counter-claim.)	

As to who should be made parties to an action, *see* JOINDER; MISJOINDER; NON-JOINDER.

§ 5. **Special proceeding.**—In the case of a petition, the parties consist of the petitioners and the respondents. In the case of a summons, the persons at whose instance it is issued are sometimes called the "*applicants*," and the persons to whom it is addressed the "*respondents*."

§ 6. **Necessary party—Proper party.**—Parties to a proceeding are also divided into necessary and proper. Necessary parties are those who are interested in the subject-matter of the proceedings, and in whose absence, therefore, it could not be fairly dealt with. Proper parties are those who, though not interested in the proceedings, are made parties for some good reason; thus, where an action is brought to rescind a contract, any person is a proper party to it who was active or concurring in the matters which gave the right to rescind. *Bagnall v. Carlton*, 6 Ch. D. 401.

§ 7. **Bill of exchange.**—As to the parties to a bill of exchange, *see* BILL OF EXCHANGE, §§ 3, 4.

PARTIES, (defined). 52 N. H. 162.

— (in a statute). 4 Wall. (U. S.) 657; 21 Ind. 29; 2 Ill. (N. Y.) 456.

PARTIES AGREED, (in an agreement). 3 Dowl. & Ry. 503.

PARTIES GRIEVED, (in a statute). 16 East 195; 1 Man. & Ry. 526; 1 Nev. & M. 677.

PARTIES INTERESTED, (in railway clauses act). L. R. 2 II. L. 175.

PARTITION.—

§ 1. Partition is where land belonging to two or more joint tenants, tenants in common, coparceners or (in England) heirs in gavelkind, is divided among them in severalty, each taking a distinct part. Partition is either voluntary, *i. e.* by agreement between the parties, or compulsory.

§ 2. **Voluntary.**—At the present day a

voluntary partition is effected either by a deed, which varies according to the nature of the property and the tenancy, or (in England) by obtaining an order of exchange from the inclosure commissioners, which takes effect without any further conveyance. (5 Dav. Prec. Conv. (2) 1; Wms. Real Prop. 140; 2 White & T. Lead. Cas. 407. For the old ways of making partition, *see* Litt. § 243 *et seq.*; Co. Litt. 167 a.) Coke also uses partition in the sense of severance of the unity of title, as where he says that the conveyance by a coparcener of her part, operates as a partition in law. Co. Litt. 167 b, Hargrave's note (2); Litt. § 309.

§ 3. **Compulsory.**—Compulsory partition is effected by an action for partition at the instance of one or more of the joint owners having a legal title. In such action the court has power to decree the sale of the property, and the distribution of the proceeds among the persons interested, in cases where that course is more convenient than an actual division of the property itself. Wms. Real Prop. 141; Wats. Comp. Eq. 461. *See* OWELTY.

PARTNER—PARTNERSHIP.—Partnerships are of two kinds: (1) True partnerships, and (2) *quasi*-partnerships, or partnerships as regards third persons.

§ 1. **True partnership.**—A true partnership is a voluntary unincorporated association of persons, formed, mainly from personal knowledge of one another, for the purpose of carrying out a joint operation or undertaking, with the object of making a profit to be shared among them. (*See* Lind. Part.; Dix. Part., *passim*; Thr. Jt. S. Co. 2; Wats. Comp. Eq. 705; Pooley v. Driver, 5 Ch. D 458; *Ex parte* Tenant, 6 Ch. D. 303; 1 Sm. Lead. Cas. 922.) Although these are the essential ingredients in a partnership, its legal nature cannot be understood unless the following principles are borne in mind:

(1) Every partner is entitled and bound to take part in the conduct of the business, unless it is otherwise agreed between them.

(2) Every partner is liable for the debts of the partnership to the whole extent of his property. As between the partners, each partner is bound to contribute to the

debts in proportion to his share of the profits. *See* CONTRIBUTION.

(3) As regards third persons, the act of every partner, within the ordinary scope of the business, binds his copartners, whether they have sanctioned it or not.

(4) The relation between the partners being personal, no one of them can put a stranger in his place without the consent of the others.

(5) In England, one partner cannot sue another (a) if any matter of partnership account is involved in the dispute; or (b) if the damages, when recovered, will belong to the firm. But one partner may sue another for breach of an agreement to contribute capital. (Lind. Part. 908.) In most if not all of the States one partner may sue another for a balance due, or for an account of the firm transactions.

As to the analogy between a partnership and a corporation, *see* FIRM, § 1. As to unincorporated partnerships with transferable shares, *see* ASSOCIATION; COMPANY, § 3 *et seq.* As to the distinction between partners and part-owners, *see* PART-OWNERS.

§ 2. **At will.**—Where no time for the duration of the partnership is fixed, it is called a "partnership at will," and may be dissolved at the pleasure of any partner at a moment's notice. (Sm. Merc. Law 26. As to the frame of partnership deeds, *see* 5 Dav. Prec. Conv. (2) 303.) As to other modes of dissolving a partnership, *see* DISSOLUTION, § 2. *See, also*, ACCOUNT, § 6.

§ 3. **Retiring and continuing partners.**—When a partner dies or retires, and the partnership agreement provides that the partnership shall not thereby be dissolved, the remaining partners are called the "continuing partners." A retiring partner (and the estate of a deceased partner) is not liable for the partnership debts contracted after his connection ceased, provided, in the case of a retiring partner, that notice of the fact is given. No notice is required in the case of a dormant partner. (Lind. Part. 418 *et seq.*) As to the bankruptcy of partners, *see* CONVERSION, § 8; FIRM, §§ 3, 4; JOINT, § 7.

True partnerships are of two kinds.

§ 4. **General partnership.**—A general partnership is where the business includes

all transactions of a particular class, as where A. and B. agree to carry on the business of bankers, grocers, &c.

§ 5. **Particular, limited, or special.**—In England, a particular (limited or special) partnership is where the parties agree to share the profits of one particular transaction; as where A. and B. agree to join in selling a particular cargo of goods, or in working a particular patent. In America, a limited partnership is one consisting of one or more general partners, jointly and severally responsible as ordinary partners, and by whom the business is conducted, and one or more special partners, who contribute in cash a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the fund so contributed. It is sometimes said that there is a third kind of partnership, called a "universal partnership," but this seems to be inaccurate. It is true that in Roman law there was a *societas omnium bonorum*, (D. xvii. 2, fr. 1, § 1, fr. 3, § 1, fr. 5, fr. 73;) but *societas* is a very different thing from "partnership," for a *societas* might be entered into for charitable purposes, mutual improvement, &c., and it is said that in reality a *societas omnium bonorum* only occurred between married persons. Holtz. Encycl. s. v. *societas*.

§ 6. **Sub-partnership.**—A sub-partnership is where a partner in a firm makes a stranger a partner with him in his share of the profits of that firm. Thus, if A. and B. carry on business as A., B. & Co.; and B. agrees with C. to give him a share of the profits received from the business of A., B. & Co.; C. is a sub-partner with B., but not a partner in the firm of A., B. & Co. Lind. Part. 55; Wats. Comp. Eq. 709. See FIRM, § 4.

§ 7. **Quasi-partnerships.**—A quasi-partnership, or partnership as regards third persons, is where one person is liable for the debts of another as if he were his partner, although no true partnership exists. The cases in which this occurs are referable to one of two principles.

§ 8. The first is, that where a person carries on business as agent for another, the latter is liable to third persons for the debts of the business. If the business is not carried on in his name, he is called a "dormant" or "undisclosed partner." (Cox v. Hickman, 8 H. L. C. 268.) Formerly, the doctrine was carried much further, so as to make every person who received a share of the profits of a business liable for its debts, (see Waugh v. Carver, 2 H. Bl. 235; 1 Sm. Lead. Cas. 922;) but the better opinion now is, that an agreement entitling one person to share the profits made by another gives rise to nothing more than a presumption that the relation of principal and agent exists between them,* and the passing of the Partnership Act, 1865, (q. v.,) has deprived the question of much of its importance in England. By the operation of this act, a person who merely lends money to a firm, in consideration of receiving a share of the profits, is not a partner even as regards third persons, but in popular language he is sometimes called a "dormant partner," (Thr. Jt. S. Co. 4; Sm. Merc. Law 20,) or *commanditaire* (q. v.)

§ 9. **Ostensible partner—Nominal partner.**—The second principle by which a person may be subjected to the liabilities of a partner is, that where a person holds himself out to third persons as a partner in the firm, he is liable to those persons for debts contracted by the firm: such a person is called an "ostensible partner." (Lind. Part. 47 et seq.; Wats. Part. 711; Thr. Jt. S. Co. 6; Sm. Merc. Law 23.) The term seems also to be used to denote a real partner whose name appears, as opposed to a secret partner. (1 Sm. Lead. Cas. 947.) Generally, the "holding out" consists in his allowing his name to appear in the firm as if he were a partner, and he is then sometimes called a "nominal partner." Lind. Part. 489; 1 Sm. Lead. Cas. 947, 951.

PARTNER, (who is). 10 La. Ann. 114; 21 N. H. 175; 43 Barb. (N. Y.) 435; 5 Den. (N. Y.) 38; 6 Watts & S. (Pa.) 139.

*Lind. Part. 33 et seq.; Wats. Part. 710; Mollwo, March & Co. v. Court of Wards, L. R. 4 P. C. 419. As to whether holders of participating policies in insurance companies are liable for its debts, see *In re Albion Life Ass. Co.*, 16 Ch. D. 83. Holders of policies in a mutual in-

surance company are not liable for its debts, unless they are members of the company. See *Winstone's Case*, 12 Ch. D. 239; *In re Albion Society*, 16 Ch. D. 83; *In re Great Britain, &c., Society*, 16 Ch. D. 263.

PARTNER, (who is not). 1 Blatchf. (U.S.) 488; 3 Woodb. & M. (U.S.) 193; 26 Ala. 733; 36 *Id.* 61; 6 Gray (Mass.) 433; 20 N. H. 90; 45 *Id.* 118; 5 Dutch. (N. J.) 74; 1 Gr. (N. J.) 76; 1 Den. (N. Y.) 337; 2 Johns. (N. Y.) Cas. 329; 1 Hill (N. Y.) 234; 3 *Id.* 162; 3 N. Y. 132; 3 Robt. (N. Y.) 702; 15 Wend. (N. Y.) 187; 20 *Id.* 70; 1 Pa. 140; 14 Pa. St. 34.

— (rights and powers of). 1 Nev. 354.

PARTNER, DORMANT, (defined). 2 Harr. & G. (Md.) 159; 4 Phil. (Pa.) 1.

— (distinguished from "nominal partner"). 19 Ves. 454-461.

— (liability of). 7 Wheel. Am. C. L. 234.

PARTNERSHIP, (defined). 9 Cal. 616, 638; 3 Harr. (Del.) 485; 4 Houst. (Del.) 338, 397; 40 Ill. 406; 3 La. Ann. 462; 7 Hill (N. Y.) 504, 513; 11 Wend. (N. Y.) 571, 580; 7 Wheel. Am. C. L. 204; 3 Kent Com. 22; Story Part. § 2; Wats. Part. 1.

— (what constitutes). 1 Black (U. S.) 346; 1 Story (U. S.) 371; 1 Wash. (U. S.) 491; 13 Ark. 28; 33 Ga. 243; 36 *Id.* 332; 27 Ind. 399; 2 Greene (Iowa) 427; 11 La. Ann. 509; 14 *Id.* 529; 1 Sm. & M. (Miss.) Ch. 404; 54 Mo. 325; 1 Hill (N. Y.) 526; 4 Paige (N. Y.) 148; 1 Ohio 84; 2 *Id.* 64, 65; 4 Ohio St. 1; 7 Pa. St. 165; 6 Serg. & R. (Pa.) 261; 2 Watts (Pa.) 342; 31 Vt. 395; Davies 320.

— (what is not). 15 Ill. 31; 4 La. Ann. 216; 5 *Id.* 302; 6 *Id.* 677; 10 *Id.* 255; 35 Me. 302; 2 Md. 38; 17 Mass. 197; 13 Minn. 523; 15 Mo. 481; 22 *Id.* 177; 6 Halst. (N. J.) 181; 16 Barb. (N. Y.) 309; 19 *Id.* 222; 47 *Id.* 317; 1 Hill (N. Y.) 235; 9 Johns. (N. Y.) 470; 10 *Id.* 226; 4 Johns. (N. Y.) Ch. 592; 5 N. Y. 186; 1 N. Y. Leg. Obs. 38; 2 Sandf. (N. Y.) 7; 4 *Id.* 311; 37 Superior (N. Y.) 110; 5 Ohio 514; 1 Pa. St. 255; 15 Serg. & R. (Pa.) 137; 2 Watts (Pa.) 86; 5 Sneed (Tenn.) 721; 10 Tex. 193; 6 Vt. 119; 10 *Id.* 170; 41 *Id.* 398; 7 Leigh (Va.) 115; 3 W. Va. 507; 1 H. Bl. 43, 48.

— (what is the true criterion of). 1 Cliff. (U. S.) 28.

— (what is evidence of). 43 Ill. 437.

— (how created). 11 La. Ann. 277; 49 Me. 108.

— (what creates, as to third persons). 24 How. (U. S.) 536.

PARTNERSHIP ACT, 1865, (also called Bovill's Act,) is the Stat. 28 and 29 Vict. c. 86. Its object was to abolish the common law rule that a person who shares in the profits of a firm is *prima facie* so far a partner as to be liable for the business debts of the firm. (See Lind. Part. 35; Wats. Comp. Eq. 710.) And it, therefore, provides that no one of the following facts shall of itself make the person concerned a partner in the firm—(1) An advance of money to the firm in consideration of a periodical payment out of or varying with the profits; (2) remuneration of the services of a servant or agent by a share of profits; (3) the receipt of an annuity out of the profits by the widow or child of a deceased partner; (4) the receipt of a share of profits in consideration of the sale of the goodwill. If the firm becomes bankrupt, the persons who have advanced money or sold the goodwill to it in consideration of a share of the

profits, are not to recover anything until the other creditors have been paid in full. See Lind. Part. 35; Wats. Comp. Eq. 710.

PARTNERSHIP CHARGE, (what is not). Penn. (N. J.) 609.

PARTNERSHIP DEBT, (what is not). Sax (N. J.) 75.

PARTNERSHIP, GENERAL, (what constitutes). 3 Abb. (N. Y.) Pr. N. S. 20.

PARTNERSHIP, LIMITED, (what constitutes). 1 Wend. (N. Y.) 457.

PARTNERSHIP, PRIVATE, (what constitutes). Olc. (U. S.) Adm. 334.

PARTNERSHIP PROPERTY.—It makes no difference whether partnership property, held for the purposes of a trade or business, consists of personal or movable property, or of real or immovable property, or of both, so far as the ultimate rights and interests of the partners are concerned. It is true, that at law, real or immovable property is deemed to belong to the person in whose name the title by conveyance stands. If it is in the name of a stranger, or of one partner only, he is deemed the sole owner at law; if it is in the names of all the partners, or of several strangers, they are deemed joint tenants, or tenants in common, according to the true interpretation of the terms of the conveyance. But however the title may stand at law, or in whose name or names soever it may be, the real estate of the partnership will in equity be treated as belonging to the partnership, and disposable and distributable in like manner as its personal property, and the parties in whose names it stands as owners of the legal title will be held to be trustees for the partnership, and accountable accordingly to the partners, according to their several shares, rights and interests in the partnership as *cestuis que trust* or beneficiaries of the same. Hence, in equity, in case of the death of one partner, there is no survivorship in the real estate of the partnership, but his share will go to his representatives. Coll. Part. 82.

PARTNERSHIP PROPERTY, (what is). Sax. (N. J.) 441; 1 Pars. (Pa.) Sel. Cas. 270; 20 Tex. 719.

PARTNERSHIP STOCK, (what is). 11 Mass. 469, 472.

PART-OWNERS.—

§ 1. Persons who are entitled to property either jointly, in common, or in co-

parcenary. Part-owners differ from partners in several respects, the principal of which are: (1) that a partner is the agent of his copartners within the ordinary scope of the business, so that he has power to bind them towards third persons even against their will, while a part-owner, in the absence of a special agreement, has no such power, and can only deal with his own interest in the property (Lind. Part. 58); (2) that a part owner can transfer his interest to a stranger, while a partner cannot without the consent of his copartners.

§ 2. *Ship*.—The term "part-owners" in this relation chiefly occurs in the law of merchant shipping. Part-owners of a ship are tenants in common. Difficult questions often arise as to whether the co-owners of a vessel are partners in respect of her, either generally or for a particular voyage. Foard Mer. Sh. 31, *et seq.* See, also, MANAGING OWNER.

PART-OWNERS, (defined). 129 Mass. 127, 128.

PARTURITION.—The act of giving birth to a child.

PARTS BEYOND SEA, (in a statute). 11 Me. 103.

PARTS OF A DOLLAR, (in a statute). 10 Pet. (U. S.) 622.

PARTS OF ACTS, (in a statute). 15 Wend. (N. Y.) 243.

PARTS, THEIR, (in a will). 2 Munf. (Va.) 458.

PARTUS.—Offspring.

Partus ex legitimo thoro non certius noscit matrem quam genitorem suum (Fortes. 42): The offspring of a legitimate bed knows not his mother more certainly than his father.

Partus sequitur ventrem (2 Bl. Com. 390): The offspring follows the dam.

This maxim applies to the *status* of the issue of a female slave by a free father in countries where slavery is recognized.

PARTY.—See PARTIES.

PARTY, (defined). 21 Me. 481; 51 N. H. 71; 56 *Id.* 74; 8 Wheel. Am. C. L. 143, 144.

— (who is not). 38 Vt. 440.

— (equivalent to "person"). 10 Bush (Ky.) 295.

— (not synonymous with "person"). 3 Hen. & M. (Va.) 255.

— (in a deed). 5 Halst. (N. J.) 48.

— (in a statute). 37 Ind. 333; 10 Bush (Ky.) 295; 63 Me. 462; 41 Md. 362, 369; 17 Mass. 222; 4 Pick. (Mass.) 410; 36 Mich. 331;

51 N. H. 71; 2 Gr. (N. J.) 440; 6 Halst. (N. J.) 318; 2 Harr. (N. J.) 434; 5 Abb. (N. Y.) Pr. 316; 53 Barb. (N. Y.) 63; 5 Hill (N. Y.) 441; 14 Hun (N. Y.) 157; 4 Lans. (N. Y.) 208; 6 Paige (N. Y.) 54; 1 Robt. (N. Y.) 607; 4 Sandf. (N. Y.) 115; 3 Serg. & R. (Pa.) 246; 36 Wis. 518; 40 *Id.* 28; 2 Ld. Raym. 1066.

PARTY AGGRIEVED, (in a statute). 3 Allen (Mass.) 556; 2 Abb. (N. Y.) Pr. 390; 60 N. Y. 16; 4 Rawle (Pa.) 268, 271; 1 Ex. D. 511; 2 Q. B. D. 608; 6 *Id.* 29, 30.

PARTY BECOMING ABSOLUTELY ENTITLED, (in land clauses act). 7 Ch. D. 708.

PARTY, EACH, (in a statute). 15 Ind. 274.

PARTY ENABLED BY LAW TO DECLARE TRUST, (in statute of frauds). 7 Ch. D. 60.

PARTY GRIEVED, (in a statute). 6 Q. B. D. 21; 7 *Id.* 465.

PARTY OR PRIVY, (to a conveyance). L. R. 9 C. P. 362.

PARTY TO A SUIT, (who is not). 1 Pick. (Mass.) 118; 21 Mich. 509; 14 Barb. (N. Y.) 536; 6 Vt. 315, 320.

— (in a statute). 15 Ind. 274.

PARTY TO AN ACTION, (in a statute). 9 Vr. (N. J.) 272.

PARTY TO THE ACTION, (in a statute). 16 Am. L. Reg. n. s. 181; 78 N. Y. 220, 221; 6 Abb. (N. Y.) Pr. n. s. 147.

PARTY TO THE PROCEEDING, (defined). 37 Ind. 333.

PARTY-JURY.—A jury made up of half foreigners and half natives. See JURY, § 9.

PARTY-STRUCTURE.—A structure separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without; whether the same be a partition, arch, floor, or other structure. (Stat. 18 and 19 Vict. c. 122, § 3.)—*Moxley & W.*

PARTY-WALL.—In the primary and most ordinary meaning of the term, a party-wall is: (1) A wall of which the two adjoining owners are tenants in common. But it may also mean (2) a wall divided longitudinally into two strips, one belonging to each of the neighboring owners; (3) a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements (the term is so used in some of the English building acts); or (4) a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favor of the owner of the other moiety. (*Watson v. Gray*, 14 Ch. D. 192.) Consult the local statutes on this subject.

PARTY-WALL, (defined). L. R. 8 Ch. 1084; 14 Ch. D. 192.

PARUM.—Little; but little.

Parum differunt quæ re concordant (2 Bulst. 86): Things which agree in substance differ but little.

Parum est latam esse sententiam nisi mandetur executioni (Co. Litt. 289): It is not enough that sentence be given unless it be ordered into execution.

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum (2 Inst. 503): It profits little to know what ought to be done, if you do not know how it is to be done.

PARVA SERJANTIA.—Petty serjeanty (*q. v.*)

PARVISE.—An afternoon's exercise or moot for the instruction of young students—bearing the same name originally with the *Parvusæ* (little-go) of Oxford. Seld. Notes, c. li.

PARVUM CAPE.—See **CAPE**.

PAS.—In French law, precedence; right of going foremost.

PASCH.—The passover.

PASCHA CLAUSUM.—The octave of Easter, or Low-Sunday, which closes that solemnity.

PASCHA FLORIDUM.—The Sunday before Easter, called "Palm-Sunday."

PASCHA RENTS.—Yearly tributes paid by the clergy to the bishop or archdeacon at their Easter visitations.

PASCUA.—A particular meadow or pasture land set apart to feed cattle.

PASCUAGE.—The grazing or pasturage of cattle.

PASNAGE, or PATHNAGE IN WOODS, &c.—See **PANNAGE**.

PASS.—

§ 1. **Conveyancing.**—In conveyancing, to **pass** is to transfer or be transferred. Thus, we may either say that a conveyance by a person entitled to make it passes the estate limited by it, (*see OPERATIVE WORDS.*) or that the estate passes by the conveyance.

§ 2. **Chancery practice.**—In the practice of the English Chancery Division, when the draft (or "minutes") of an order or judgment has been settled by the registrar in the presence of the parties, it is left for engrossment, and when it has been engrossed, the parties again attend to examine the engrossment with the draft; if it is correct they sign it, and this is

generally called "passing" the order, but strictly speaking the passing is performed by the registrar, who places his initials at the end; after which the order is entered (*q. v.* and *see MINUTES*, § 3). Hunt. Eq. 87; Dan. Ch. Pr. 876.

§ 3. **Account.**—When an account has been brought into court and vouched, the clerk or judge is said to have passed or allowed it, with or without disallowances or surcharges. The term "pass" is also applied to the accounting party who brings in the account. *See ACCOUNT*, §§ 6, 7.

§ 4. **Statute.**—When a legislative bill is finally assented to by a majority vote of the body having its enactment in consideration, it is said to be "passed" by such body; and when also passed by the other house and approved by the executive (*see VETO*) such bill becomes a statute.

§ 5. **In criminal law.**—To pass a forged or counterfeit coin or instrument, is to circulate, put forth or utter it.

§ 6. **Pass** is also the name of a written permission given by some one in authority, allowing the holder to go beyond certain designated bounds, or to a specified place. These passes are most frequently issued by military officers in time of war or insurrection, but are sometimes given by sheriffs to their prisoners, and during the existence of slavery, were a sort of passport enabling slaves to leave their plantations.

PASS, (applied to counterfeit bank bills). 4 Allen (Mass.) 301.

— (in revised statutes, ch. 51, § 1). 10 Cush. (Mass.) 499.

PASS-BOOK.—A kind of memorandum book which bankers and some classes of merchants issue to their customers, adapted to be carried back and forth by the customer, and in which a record of his deposits or purchases may be made. Being in the customer's general possession, it is a check upon the entries made by the other party in his own books. The significance of the name seems to be in the fact that the book passes back and forth; the customer keeps it, but the dealer makes the entries.—*Abbott*.

PASSAGE.—(1) The easement of passing over a piece of private water, analogous to a right of way over land. (*Alban v. Brounsall*, Yelv. 163; *Tailor v.*

Markham, 1 Brownl. 215. *See* EASEMENT; WAY.) (2) A voyage upon a ship or other vessel navigating the sea, or some large lake or river.

PASSAGE, (in an indictment). 1 Mod. 73.
— (of an act). 16 Gray (Mass.) 144; 33 Pa. St. 202.

PASSAGE COURT.—*See* COURT OF PASSAGE.

PASSAGE-MONEY.—The sum paid for the conveyance of a person, with or without baggage, by water, as distinguished from "freight," or "freight-money," which is paid for the transportation of goods and merchandise.

PASSAGE OF THIS ACT, (in a statute): 10 R. I. 88, 90.

PASSAGE ROOM, (in pleading in ejectment). 2 Ld. Raym. 1470.

PASSAGIO.—An ancient writ addressed to the keepers of the ports to permit a man who had the king's leave to pass over sea.—*Reg. Orig.* 193.

PASSAGIUM REGIS.—A voyage or expedition to the Holy Land made by the kings of England in person.—*Cowell*.

PASSATOR.—He who has the interest or command of the passage of a river; or a lord to whom a duty is paid for passage.—*Wharton*.

PASSED IN THE PRESENT SESSION, ANY ACT TO BE, (in a statute). Dwar. Stat. 686.

PASSENGER.—A person conveyed for hire from one place to another.

§ 1. By sea—Rights and duties of.—

Passenger-ships are those peculiarly appropriated to the conveyance of passengers. In some respects, passengers by ship may be considered as a portion of the crew. They may be called on by the master or commander of the ship, in case of imminent danger, either from tempest or enemies, to lend their assistance for the general safety; and in the event of their declining, may be punished for disobedience. This principle has been recognized in several cases; but as the authority arises out of the necessity of the case, it must be exercised strictly within the limits of that necessity. (Boycé v. Bayliffe, 1 Campb. 58.) A passenger is not, however, bound to remain on board a ship in the hour of danger, but may quit it if he have an opportunity; and he is not required to take

upon himself any responsibility as to the conduct of the ship; if he incur any responsibility, and perform extraordinary services, in relieving a vessel in distress, he is entitled to a corresponding reward. The goods of passengers contribute to general average. (Abb. Sh. 3, c. x.)—*Wharton*.

§ 2. Liability of carrier.—Unless where any particular passenger travels with a free pass or otherwise "at his own risk," (McCawley v. Furness Ry. Co., L. R. 8 Q. B. 57,) the carrier (whether person or company) is liable for negligence or unskillfulness producing damage or death, (Crofts v. Waterhouse, 3 Bing. 319;) but the contributory negligence or unskillfulness of the passengers may relieve the carrier, (Martin v. Great Northern Ry. Co., 16 Com. B. 179.) As regards the baggage of passengers, (being articles properly so called, and not including merchandise,) it appears that the carrier is in the general case liable for its safe delivery on the platform of arrival, (Richards v. London, Brighton, and South Coast Ry. Co., 7 Com. B. 839,) and in certain cases even for its safe transfer to the agent of the passenger at the station or point of arrival, (Willoughby v. Horridge, 12 Com. B. 742;) and conditions of an unreasonable character exempting the company from liability for the loss or damage of baggage are void, (Cohen v. South Eastern Ry. Co., 1 Ex. D. 217; 2 Id. 253,) excepting as regards the carriage thereof on railways not belonging to the company. (Zunz v. South Eastern Ry. Co., L. R. 4 Q. B. 539; and, see, Henderson v. Stevenson, L. R. 2 H. L. Sc. 470.) But the passenger must travel with his baggage, (Becher v. Great Eastern Ry. Co., L. R. 5 Q. B. 241,) and must not take it (excepting at his own risk) into the carriage with him, (Talley v. Great Western Ry. Co., L. R. 6 C. P. 44.)—*Brown*. For the American cases on the liability of carriers of passengers, *see* references given under BAGGAGE; CARRIER; COMMON CARRIER.

PASSENGER, (defined). L. R. 2 A. & E. 105.

— (who is not). 129 Mass. 500.

— (responsibility of carrier of). 13 Wend. (N. Y.) 626; 2 Campb. 80; 2 Esp. 533.

PASSIAGIARIUS.—A ferryman
—*Isaac*.

PASSING, (a statute). 4 T. R. 660, 662.

PASSING A COUNTERFEIT NOTE, (what is not). 3 Yerg. (Tenn.) 451.

— (in a statute). 11 Mass. 136; 2 Binn. (Pa.) 339.

PASSING A PAPER, (defined). 1 Baldw. (U. S.) 366.

PASSING OF THE ACT, FROM AND AFTER THE, (in a statute). 5 Com. Dig. 320.

PASSING-TICKET.—A kind of permit, being a note or check which the toll-clerks on some canals give to the boatmen, specifying the lading for which they have paid toll.

PASSIO.—Pasnage, a liberty for hogs to run in forests or woods to feed upon mast. Mon. Ang. 1, 682.

PASSION, (as opposed to "deliberation"). 74 Mo. 222; 1 Ky. L. J. 185.

PASSIVE DEBT.—A debt upon which, by agreement between the debtor and creditor, no interest is payable, as distinguished from *active debt*, *i. e.* a debt upon which interest is payable. In this sense, the terms *active* and *passive* are applied to certain debts due from the Spanish government to Great Britain.—*Wharton*.

PASSIVE TRUST.—A trust as to which the trustee has no active duty to perform. Passive uses were resorted to before the Statute of Uses, in order to escape from the trammels and hardships of the common law, the permanent division of property into legal and equitable interests being clearly an invention to lessen the force of some pre-existing law. For similar reasons, equitable interests were after the statute revived under the form of trusts. As such they continued to flourish, notwithstanding the singular amelioration effected at a later period in the law of tenure, because the legal ownership was attended with some peculiar inconveniences. For, in order to guard against the forfeiture of a legal estate for life, passive trusts, by settlement, were resorted to, and hence trusts to preserve contingent remainders; and passive trusts were and are created in order to prevent dower.

Where an active trust was created, without defining the quantity of the estate to be taken by the trustees, the courts endeavored to give by construction the quantity originally requisite to satisfy the trust in every event, but if a larger estate was expressly given, the courts could not reject the excess; and, although the estate taken, whether expressly or constructively, might not have exceeded the original scope of the trust, yet, if eventually no estate, or a less estate, were actually wanted, the legal ownership remained wholly or partially vested in the trustee as a merely passive trustee. 1 Hayes Conv. 103.

PASSIVE USE.—A permissive use (*q. v.*)

PASSPORT.—(1) A license for the safe passage of any one from one place to another, or from one country to another. (See 2 Steph. Com. (7 edit.) 494; 4 Id. 217.) (2) A kind of document carried by a mer-

chant vessel in time of war, intended to evidence the nationality of the vessel, and protect her from belligerents. (3) A safe conduct, or permission granted in time of war, for the removal of persons or effects from a hostile country.—*Burrill*.

PAST MEMBERS, (in companies act, 1862). L. R. 5 H. L. 711.

PASTITUM.—Pasture land.—*Domesd.*

PASTOR.—A shepherd. Applied to a minister of the Christian religion, who has charge of a congregation, hence called his "flock."

PASTURAGE—PASTURE.—

§ 1. "Pasture" means both (1) land employed for the pasturage of cattle, &c.; and (2) the right of pasture. "If a man doth grant all his pastures, *pasturas*, the land itself employed to the feeding of beasts doth *passe*, and also such pastures or feedings as he hath in another man's soile." Co. Litt. 4b.

§ 2. A right of pasture is the right of feeding animals on the grass and other wild herbage, and the leaves, mast, acorns, &c., of trees growing on land belonging to another person. Rights of pasture, in English law, are of three kinds, several, common, and seignorial.

§ 3. **Several.**—A several pasture is one which entitles the person having the right to exclude the owner of the land from feeding his beasts on it. (Co. Litt. 122a.) Such a right may be created by grant or prescription. (Wms. Comm. 9.) Sheepheaves (*q. v.*) seem to be several rights of pasture.

§ 4. **Common.**—A common of pasture is where the person having the right can only exercise it in common with the owner of the soil. As to the varieties of common of pasture, see **COMMON**, § 4 *et seq.*

§ 5. **Seignorial.**—A seignorial right of pasture occurs in the case of a foldcourse (*q. v.*)

§ 6. **Regulated pasture.**—By the 118th section of the General Inclosure Act, 1845, any land directed to be inclosed under that act may be set apart to be stocked and depastured in common by the persons interested therein. The valuer acting in the matter is to ascertain and allot the stints or rights of pasturage of the persons interested, the numbers and kinds of animals to be admitted to the pasture, the times during which the animals may be kept on the pasture, &c. Such a pasture is called a "regulated pasture." See **FIELD REEVE**.

PASTURE, (what word in a grant will pass). Com. L. & T. 75.

PASTUS.—The procurator or provision which tenants were bound to make for their lords at certain times, or as often as they made a

progress to their lands. It was often converted into money.—*Wharton*.

PATENT.—

§ 1. **For invention.**—A privilege granted by the crown or government to the first inventor of a new and useful discovery or mode of manufacture, that he alone shall be entitled, during a limited period, to use and make a profit by it. It is so called because the privilege is granted by letters-patent (*q. v.*) In England, a patent cannot be granted in the first instance for longer than fourteen years, but where an extension is necessary to remunerate the patentee for his expense and labor in perfecting the invention, the term may be extended by the Privy Council for another fourteen years. (Stat. 21 Jac. I. c. 3; 5 and 6 Will. IV. c. 83; 7 and 8 Vict. c. 69; 16 and 17 Vict. cc. 5 and 115; Wms. Pers. Prop. 279; 2 Steph. Com. 25 *et seq.*; *In re Dering's Patent*, 13 Ch. D 393.) In America, the term is now seven-teen years and there can be no extension. *See* EXTENSION OF PATENT.

§ 2. A patentee may grant licenses for the use of his invention, or may assign the patent by a registered instrument.

§ 3. A patent is incorporeal personal property. *See* PERSONAL PROPERTY, § 6.

§ 4. The remedy for the infringement of a patent is by action for damages or injunction, or both. *See* ACCOUNT, § 8; INQUIRY, § 2.

See, further, as to patents under titles, CAVEAT; INFRINGEMENT; INJUNCTION; LETTERS-PATENT; NOVELTY; PARTICULARS OF BREACHES AND OBJECTIONS; SCIRE FACIAS.

§ 5. **For land.**—A conveyance by the United States, or by a State, of a portion of the public lands. *See* United States Rev. Stat. tit. "The public lands."

PATENT, (defined). 18 Cal. 11.

— (as equivalent to a "deed"). 20 Cal. 387.

— (on label attached to goods). 5 Ch. D. 850.

PATENT AMBIGUITY.—*See* AMBIGUITY.

PATENT BILL OFFICE.—The attorney-general's patent bill office is the office in which were formerly prepared the drafts of all letters-patent issued in England, other than

those for inventions. The draft patent was called a bill (*q. v.* § 5), and the officer who prepared it was called the "clerk of the patents to the queen's attorney and solicitor general." By the Great Seal Act, 1851, warrants were substituted for bills, and by the G. S. Act, 1880, the duty of preparing such warrants was transferred to the clerk of the crown in chancery (*q. v.*) and *see* PRIVY SEAL.

PATENT FOR DESIGN.—Provision is made in the patent laws for the protection of those who devise new and ornamental designs, and patents are granted for that purpose. These patents, while of the same general nature as ordinary patents for inventions, are subject to some provisions of law peculiar to themselves, as to which *see* United States Rev. Stat. §§ 4929–4933. *See, also, REGISTRATION OF DESIGNS.*

PATENT OF PRECEDENCE.—Letters-patent granted, in England, to such barristers as the crown thinks fit to honor with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents, which is sometimes next after the attorney-general, but more usually next after his majesty's counsel then being. These rank promiscuously with the king's (or queen's) counsel, but are not the sworn servants of the crown. 3 Bl. Com. 28; 3 Steph. Com. 274.

PATENT OFFICE.—

§ 1. A bureau attached to the department of the interior at Washington having charge of the issuing of patents for inventions and other business incidental thereto.

§ 2. There are two patent offices in England, namely, the office of Commissioners of Patents for Inventions, and the Great Seal Patent Office.

§ 3. **Patents for inventions.**—The office of the commissioners of patents is where the business relating to the granting of letters-patent for inventions is carried on. *See* COMMISSIONER OF PATENTS; PATENT.

§ 4. **Great Seal Patent Office.**—As to the Great Seal Patent Office, *see* GREAT SEAL, § 4. The chief of the office is called the "clerk of the patents." By the Great Seal (Office) Act, 1874, power is given to abolish the office of clerk of the patents, and to transfer the duties to the Clerk of the crown in Chancery (*q. v.*)

PATENT RIGHT.—*See* PATENT.

PATENT RIGHT, (in a license to use a patent). 1 Conn. 342.

PATENT RIGHT FOR SUCH AS I HAVE, (in a grant of a license). 4 Wheel. Am. C. L. 4.

PATENT-ROLLS.—Registers in which letters-patent are recorded in England.

PATENT WRIT.—An open writ; a writ not sealed up or closed. *See* CLOSE WRITS.

PATENTEE.—One who has obtained a patent.

Pater est quem nuptiæ demonstrant (Co. Litt. 123): He is the father whom the nuptials indicate.

This maxim it is which prevents an apparent father from bastardizing the issue born under cover of his marriage. The evidence of access or of non-access between married people living together is excluded for public reasons of decency and morality. (Rol. Abr. Bastard, B.; Co. Litt. 244a.) But the maxim does not exclude proof of non-access, where the husband is proved to have been absent during the entire period of gestation. *Morris v. Davis*, 5 Cl. & F. 163; and *see* Banbury Peerage Case, 1 S. & S. 155; *Barony of Saye and Sele*, 1 H. L. C. 507.

PATER PATRIÆ.—Father of the country. *See* PARENS PATRIÆ.

PATERFAMILIAS.—In the civil law, one who was *sui juris* and the head of a family. Sand. Just. (5 edit.) 26.

PATERNA PATERNIS.—An expression used in the French law to signify that, in a succession, the property coming from the father of the deceased descends to his paternal relations.—*Bouvier*.

PATERNAL.—That which belongs to the father or comes from him.

PATERNAL POWER.—The lawful authority of parents over their children.

PATERNAL PROPERTY.—Property which descends from the father and other ancestors of the paternal stock.

PATERNITY.—The state or condition of a father. It becomes a question, when a widow marries immediately after the death of her husband, and she is delivered of a child at the expiration of ten months from the death of the first husband, as to the paternity of the child. Blackstone and Coke say, that if a man die, and his widow soon after marry again, and a child is born within such a time as that by the course of nature it might have been the child of either husband, in this case he is said to be more than ordinarily legitimate, for he may, when he arrives at years of discretion, choose which of the fathers he pleases. But Hargrave suggests that the circumstances of the case, instead of the choice of the issue, should determine who

is the father. The Romans forbade a woman to marry until after the expiration of ten months from her husband's decease, which term was prolonged to twelve by Gratian and Valentinian. The French Code has adopted the same rule, viz., after ten months. It was also established under the Saxon and Danish governments. It was the law in England until the Conquest. Beck Med. Jur. 382.

PATIBULARY.—Belonging to the gallows.

PATIBULATED.—Hanged on a gibbet.

PATRIA.—The country; the men or jury of a neighborhood.

PATRIA POTESTAS.—In the civil law, paternal power. For the extent of this great power, *see* Sand. Just. (5 edit.) 28. The modes in which the *patria potestas* was ended were: (1) The death of the parent; (2) the parent or son suffering loss of freedom or citizenship; (3) the son attaining certain dignities; (4) emancipation.—*Wharton*.

PATRIARCH.—The chief bishop over several countries or provinces, as an archbishop is of several dioceses. Godb. 20.

PATRICIDE.—One who has killed his father. As to the punishment of that offense by the Roman law, *see* Sand Just. (5 edit.) 496. *See* PARRICIDE.

PATRICIUS.—In the civil law, a title of the highest honor, conferred on those who enjoyed the chief place in the emperor's esteem.

PATRIMONY.—An hereditary estate or right descended from ancestors.

PATRINUS.—A godfather.

PATRITIUS.—An honor conferred on men of the first quality in the time of the English Saxon kings.

PATRON.—The patron of a living or benefice is the owner of the advowson (*q. v.*); and in the Roman law, the former master of a freedman was called his "patron." Also, in the French marine law, the captain or master of a vessel.

PATRONAGE.—The right of presenting to a benefice. A disturbance of patronage is a hindrance or obstruction of a patron to present his clerk to his benefice, the remedy for which was the real action of *quare impedit*.

PATRONATUS.—Patronage.

PATRONIZE, (defined). 9 Bradw. (Ill.) 345.

Patronum faciunt dos, ædificatio, fundus (Dod. Adv. 7): Endowment, building and land make a patron.

PATROON.—In early New York law, the lord of a manor.

PATRUELIS.—In the civil law, a cousin-german by the father's side; the son or daughter of a father's brother.—*Wharton*.

PATRUUS.—An uncle by the father's side, a father's brother.

PATRUUS MAGNUS.—A grandfather's brother, granduncle.

PATRUUS MAJOR.—A great-grandfather's brother.

PATRUUS MAXIMUS.—A great-grandfather's father's brother.

PATTERNS, (equivalent to "tools"). 124 Mass. 418, 421.

PAUPER means (1) a person in receipt of relief under the poor laws; (2) a person suing or defending an action in *forma pauperis*. As to the former, see **GUARDIANS OF THE POOR**; **OVERSEER**; **PARISH**; **POOR LAW**; **SETTLEMENT**; as to the latter, see **DISPAUPER**; **DIVES**; **IN FORMA PAUPERIS**.

PAUPER. (defined). 30 Ark. 764; 124 Mass. 596; 11 Pick. (Mass.) 538; 3 Pittsb. (Pa.) 129; 46 Vt. 617, 620.

— (who is). 14 Pick. (Mass.) 341.
— (in a statute). 49 Ill. 186; 10 Cush. (Mass.) 238.

PAUPERIES.—In the Roman law, damage done by some domesticated animal during some sudden willfulness, occasioned e. g. by heat. The owner was liable.

PAVAGE.—Money paid towards paving the streets or highways.

PAVE, (defined). 31 Iowa 31.
PAVEMENT, (in a statute). 20 Hun (N. Y.) 303, 304.

PAVING, (includes "flagging of sidewalks"). 76 N. Y. 174.

PAWN—PAWNBROKER.—Pawn is sometimes used (especially by the older writers) in the same sense as "pledge" (*q. v.*), (*Coggs v. Bernard*, *Ld. Raym.* 909; 1 Sm. Lead. Cas. 188;) but more usually at the present day it signifies "a pledge to a pawnbroker or person who keeps a shop for the purchase or sale of goods, and takes goods by way of security for money advanced thereon." Statutory regulations

have been made for preventing frauds and overcharges by pawnbrokers. Thus, in England, every pawnbroker taking a pledge for a loan not exceeding £10 is bound to give the pawner a pawn ticket, specifying the charges for interest, &c., which he is allowed by the statute to make, the period within which the pledge may be redeemed, &c.; he is also bound to keep account books showing all sales of pledges by him. (Pawnbrokers Act, 1872; *Fish. Mort.* 70) Similar regulations are provided by statute in the several States. He has a statutory power of sale by auction. (*Fish. Mort.* 503.) In other respects he is a bailee, like an ordinary pledgee. See **BAILMENT**, § 2.

PAWNAGE, or PANNAGE.—See **PANNAGE**.

PAWNEE.—The person with whom a pawn is deposited; a pawnbroker (*q. v.*)

PAWNER, or PAWNOR.—The person depositing a pawn.

PAX REGIS.—The king's peace; the verge of the court.

PAY, (defined). 1 Cush. (Mass.) 73; 36 Barb. (N. Y.) 614; 36 N. Y. 522, 527.

— (as equivalent to "deliver"). 1 Bouv. Inst. 459.

— (condition in a bond not to). 2 Salk. 463.

PAY, I PROMISE TO, (in a note). 4 Barn. & C. 235.

PAY MY DEBTS, (in a will). 1 Root (Conn.) 343.

PAY PURCHASE MONEY, (the purchase of land subject to an agreement to). 3 Watts (Pa.) 60.

PAY THE CONTENTS TO MY USE, (in a promissory note). 3 Mass. 227.

PAYABLE.—A sum of money is said to be payable when a person is under an obligation to pay it. "Payable" may therefore signify an obligation to pay at a future time, but when used without qualification "payable" means that the debt is payable at once, as opposed to "owing" (*q. v.*) *In re Stockton, &c., Co.*, 2 Ch. D. 103.

PAYABLE, (in a settlement). 3 Ch. D. 654; 9 Ves. 300.

— (in a will). 8 Jur. 770; *L. R.* 10 Eq. 224; 16 *Id.* 208; 5 Ch. D. 984; 17 *Id.* 887; 14 Ves. 470, 477; 16 *Id.* 172.

PAYABLE AS CONVENIENT, (in a contract). 120 Mass. 171.

PAYABLE AT TWENTY-ONE, (in a will). 10 Mod. 434; 1 Str. 238.

PAYABLE AT TWENTY-ONE OR MARRIAGE, (a legacy). 2 Bro. Ch. C. 305.

PAYABLE IN CURRENCY, (in a promissory note). 8 Minn. 324.

PAYABLE IN TRADE, (defined). 114 Mass. 34.

PAYEE.—One to whom a bill of exchange, promissory note or check, is made payable. *See* the three titles.

PAYEE, (in a statute). 1 Scam. (Ill.) 140, 142.

PAYING, (cannot mean "liable to pay"). 14 Ves. 4.

_____ (in an agreement). 2 Hen. & M. (Va.) 42.

_____ (in an assignment). 3 Wheel. Am. C. L. 182.

_____ (in a bill of sale). 8 Conn. 491.

_____ (in a covenant). Str. 458.

_____ (in a lease). 2 Mod. 34.

_____ (in a will). 2 Conn. 196, 199; 2 Halst. (N. J.) 378; 2 Yeates (Pa.) 367; Reeve Dom. Rel. 488; 1 Cro. 146, 204, 378, 379, 833; Cro. Jac. 527; Dyer 73 a, 348 a; Hob 65; 11 Ir. Eq. 386; 2 Mod. 25; 1 Id. 208; Poph. 11; 1 T. R. 346; 2 Vern. 106; Willes 652; 4 Bac. Abr. 324.

PAYING FREIGHT ACCORDING TO CHARTER-PARTY, (in a bill of lading). 3 East 585.

PAYING FREIGHT FOR THE SAID GOODS, (in a bill of lading). 13 East 565.

PAYING MY DEBTS, AFTER, (in a will). Willis Trust. 130.

PAYING MY TESTATOR'S LAWFUL DEBTS, (in a will). 2 W. Bl. 1215.

PAYING OUT, (what is not). 5 Redf. (N. Y.) 460.

PAYING OUT NOTES, (distinguished from "issuing"). 2 Cranch (U. S.) C. C. 141; 8 Mich. 104.

PAYING OUT OF THE RENTS AND PROFITS, (in a will). 2 Pres. Est. 236.

PAYING RENT, (in an award). 1 Cro. 211.

PAYING THE RENT, (in a lease). 2 Mod. 34, 35.

PAYING THEREOUT, (in a will). 3 Burr. 1533, 1618; 4 East 496, 499; 5 Id. 87; 2 Mod. 26; 1 Vern. 104; 2 Id. 152; 8 Com. Dig. 476; 2 Pres. Est. 218.

PAYING YEARLY AND EVERY YEAR, (in a will). 5 T. R. 13.

PAYMASTER-GENERAL.—

§ 1. In English law, the officer who makes the various payments out of the public money required for the different departments of the State, by issuing drafts on the Bank of England. For the history of the office, *see* Return as to Public Income, &c., 1869, part ii. 338; Cox Inst. 697.

§ 2. **Chancery business.**—By the Stat. 35 and 36 Vict. c. 41, the duties of the accountant-general of the court of Chancery were transferred to the paymaster-general. (*See* ACCOUNTANT-GENERAL.) The paymaster-general carries out the duties so transferred to him at the "office of the paymaster-general for chancery business," in the Royal Courts of Justice, London. The business transacted there includes the issuing of

directions for the payment and transfer into court of the moneys and securities belonging to the suitors; the payment by drafts on the Bank of England of sums payable out of court, and of the interest on funds in court; the keeping of the necessary accounts, and the issuing of certificates and transcripts of the accounts. *See* CERTIFICATE, p. 186, n. (11) *et seq.*; DIRECTION, § 2; PAYMENT INTO COURT.

PAYMENT.—

§ 1. A transfer of money from one person (the payor) to another (the payee). When made in pursuance of a debt or obligation it is sometimes called "payment in satisfaction."

§ 2. **In fact—In law.**—Payment in fact is an actual payment from the payor to the payee; payment in law is a transaction equivalent to actual payment. Thus, payment in fact by a debtor to one of two or more joint creditors is payment in law to all; and retainer, set-off, allowance in account, acceptance of security, goods or other means of obtaining actual payment, and payment into court (*q. v.*), are said to be equivalent to payment, because they produce a satisfaction of the debt.

§ 3. **Absolute—Conditional.**—Payment in satisfaction is said to be absolute when the debt is completely discharged, as by payment of cash without stipulation; conditional payment is where the debt may afterwards revive if the mode of payment does not result in actual payment, as where a creditor is paid by a check or bill which is afterwards dishonored; whether the acceptance by the creditor of a negotiable security operates as conditional or absolute payment is a question of fact in each case.

As to general and appropriated payments, *see* APPROPRIATION, § 5.

As to the effect of part payment, *see* PART PAYMENT.

§ 4. **Payment for honor.**—In the law of bills of exchange, payment for honor is where a person pays a dishonored bill for the honor of some one of the parties. The payor has the rights of a holder against the person for whose honor he has paid, and against all antecedent parties, but the subsequent parties are discharged. Byles Bills 286. *See* ACCEPTANCE, § 5; HONOR.

PAYMENT, (defined). 2 La. Ann. 24; 3 Duer (N. Y.) 426, 441.

PAYMENT, (what constitutes). 1 Root (Conn.) 430; 5 Mass. 299; 10 *Id.* 47; 5 Pick. (Mass.) 1; 12 Johns. (N. Y.) 409; 13 Wend. (N. Y.) 109; 4 Watts (Pa.) 452; 4 Bing. 112.

— (what is not). 10 Wheat. (U. S.) 333; 43 Conn. 14; 6 Mass. 145; 3 Pick. (Mass.) 12; 394; 8 *Id.* 522; Coxe (N. J.) 85; South. (N. J.) 770; 2 Cal. (N. Y.) 117; 1 Cow. (N. Y.) 290; 1 Hall (N. Y.) 56; 1 Hill (N. Y.) 516; 2 Johns. (N. Y.) 455; 5 *Id.* 68; 8 *Id.* 79, 202, 389; 9 *Id.* 310; 2 Johns. (N. Y.) Cas. 438; 3 *Id.* 71; 11 Wend. (N. Y.) 9; 19 *Id.* 557; 1 Pa. 381; 69 Pa. St. 334; 5 Rawle (Pa.) 166; 1 Serg. & R. (Pa.) 296; 10 *Id.* 314; 14 *Id.* 434; 2 Watts (Pa.) 122; Burr. 825; 2 P. Wms 129.

— (when presumed). 16 Johns. (N. Y.) 210.

— (demand of). 1 Esp. 31.
— (in a bond). Cro. Jac. 281.
— (in a plea). 6 Man. & G. 40.
— (evidence under plea of). 3 Cranch (U. S.) 293; 5 *Id.* 11; 5 Pick. (Mass.) 44; 8 Johns. (N. Y.) 374.

PAYMENT INTO COURT.—

§ 1. The deposit of money with an official or banker of a court of justice for the purposes of proceedings pending in the court.

Payment into court may be made with one of three objects.

§ 2. *In satisfaction.*—Where the defendant in an action for debt or damages admits the plaintiff's claim to a certain amount, he may pay that amount into court by way of satisfaction or amends, and plead the payment in as a defense. The plaintiff (unless otherwise ordered) is entitled to receive the amount paid in, and if he accepts it in satisfaction of his entire claim the defendant must pay him his costs of the action. *Hawksley v. Bradshaw*, 5 Q. B. D. 22, 302.

§ 3. *To abide the event.*—Money may be paid into court to remain there pending litigation. Thus, where a *prima facie* liability is established against a defendant, the court may order him to pay the amount in question into court to remain there until the rights of the parties have been determined, or, in the language of common law, "to abide the event" of the litigation; so where a defendant is a trustee or stakeholder of a fund he may be ordered to pay it into court. (*See* Dan. Ch. Pr. 1619 *et seq.*) Payment into court is also a mode of giving security, *e. g.* for the costs of an appeal.

§ 4. Under Trustee Relief Act, &c.—In the English Chancery Division of the High

Court, payment into court is also a mode by which a person may relieve himself from the responsibility of distributing or administering a fund in his hands. *See* LANDS CLAUSES CONSOLIDATION ACT; TRUSTEE RELIEF ACT; *also*, DEPOSIT, § 3; PAYMASTER-GENERAL; TRANSFER.

§ 5. Where land subject to any incumbrance is sold, in England, whether by the court or out of court, the court may direct or allow payment into court of a sum sufficient to provide for the incumbrance, and thereupon declare the land to be freed from it. The court may distribute or apply the fund in court according to the rights of the parties. Conveyancing Act, 1881, §§ 5, 21, § 3, 2 § vii.

PAYMENT OF A BOND, (what is). Bush. (N. C.) L. 336.

— (what is not). 1 Vern. 150.

PAYMENT OF A DEBT, (what is not). 2 Gill & J. (Md.) 493.

PAYMENT OF MY JUST DEBTS AND FUNERAL EXPENSES, AFTER, (in a will). 2 Bos. & P. 247.

PAYMENT OR SATISFACTION, (in a demand for). 1 Chit. Gen. Pr. 567.

PAYMENTS, (how applied). 4 Cranch (U. S.) 317; 6 *Id.* 8.

PAYMENTS AND CREDITS, (in mechanics' lien law). 39 Cal. 116.

PAYMENTS, YEARLY, (in a will). 4 T. R. 89, 92.

PAYS.—*See* PAIS.

PEACE.—In municipal (as opposed to international) law, "peace" or the "king's peace" is used to signify the law relating to public order. Hence, an indictment usually concludes with a charge that the offense complained of was committed "against the peace," &c., although the omission of the words is no defect. *See* ARTICLES OF THE PEACE; BILL OF PEACE; BREACHES OF THE PEACE; COMMISSION OF THE PEACE; JUSTICE OF THE PEACE.

PEACE, (defined). 2 Hurlst. & C. 512.

PEACE, BREACH OF THE, (what is). 1 Atk. 58.

PEACE IS MADE, TEN DAYS AFTER, (in a bond). 64 N. C. 532.

PEACE OF GOD AND THE CHURCH.—That rest which the king's subjects had from trouble and suit of law between the terms of court.—*Cowell*.

PEACEABLE ENTRY, (in statute of forcible entry). 38 Cal. 410, 411.

Peccata contra naturam sunt gravissima (3 Inst. 20): Crimes against nature are the most heinous.

Peccatum peccato addit qui culpae quam facit patrocinia defensionis adjungit (5 Co. 40): He adds fault to fault who sets up a defense of a wrong committed by him.

PECIA.—A piece or small quantity of ground.—*Paroch. Antiq.* 240.

PECK.—A measure of two gallons; a dry measure.

PECULATUS.—In the civil law, embezzling of public money.

PECULIARS, in ecclesiastical law, are districts exempt from the jurisdiction of the ordinary of the diocese. Royal peculiars are the king's free chapels. (*Rog. Ecc. L.* 709.) Formerly the peculiar jurisdictions in England amounted to nearly three hundred; but they have been practically abolished by recent legislation. *Phillim. Ecc. L.* 1203. See COURT OF PECULIARS; ORDINARY.

PECULIUM.—In the Roman law, the permissive property of slaves and of children in the *potestas* of their masters or fathers. The *peculium* of the slave was and continued to be his purely on sufferance of his master; but as regards the *peculium* of children, the following distinctions were taken, that is to say: (1) *Profectitium Peculium*, that arising from (*profectum*) the property of the father committed to the child for the purposes of trade, remained the father's in full *usufruct* and *dominium*; (2) *Adventitium Peculium*, that accruing to the child from adventitious sources or from his own labor alone, belonged in *usufruct* only to the father, and belonged in *dominium* to the child; and (3) *Castrense* or *Quasi Castrense Peculium*, that coming to the child as the reward of military services or of attendance at the palace, belonged to the child in full *usufruct* and *dominium* both, so that he could make a will of it; but as regarded this last mentioned *peculium*, the father (if he emancipated the child) became *ipso facto* entitled to the *usufruct* in one equal half part thereof, although otherwise the child's right thereto was not affected.—*Brown*.

PECUNIA.—Properly money; but anciently, cattle, and sometimes other goods as well as money.

PECUNIA CONSTITUTA.—In the Roman law, money owing (even upon a moral obligation) upon a day being fixed (*constituta*) for its payment, became recoverable upon the implied promise to pay on that day, in an action called *de pecuniâ constitutâ*, the implied promise not amounting (of course) to a *stipulatio*.

Pecunia dicitur a pecus, omnes enim veterum divitiæ in animalibus consistebant (*Co. Litt.* 207): Money (*pecunia*) is so called from cattle (*pecus*), because all the wealth of our ancestors consisted in cattle. So chattels (cattle) means all tangible personalty.

PECUNIA NON NUMERATA.—In Roman law, when a bond had been given for the repayment of money which at the time of giving the bond it was the intention of the obligor to borrow, and the obligee (although in possession of the bond) refused in fact to advance the money, then to an action on the bond, the de-

fense might be pleaded that the money had never been in fact advanced (*exceptio de pecuniâ non numeratâ*); and the *onus* of disproving this defense was thrown on the plaintiff (the obligee) for two years after the date of giving the bond; but after that period, the *onus* of proving it was left with the defendant (the obligor), because (of course) he might have been active earlier to obtain the delivery up of the bond, upon the ground of the fraud that had been practiced upon him.—*Brown*.

PECUNIA NUMERATA.—Counted money; money paid by count or tale. *Bract.* 94.

PECUNIA SEPULCHRALIS.—Money anciently paid to the priest at the opening of a grave for the good of the deceased's soul. See MORTUARY, § 2.

PECUNIA TRAJECITITIA.—Literally, money carried across the sea (*quæ trans, mare vehitur*). (*Dig.* 32, 2, 1.) Money lent to sea, or advanced on the hazard of the lender, to carry (as was supposed) over the sea. (*Moll. de J. M.* 357.) Another name for *foenus nauticum*, or maritime interest. (See 2 *Sumn.* (U. S.) 157, 181.)—*Burrill*.

PECUNIARY CAUSES.—Such as arise in England, either from the withholding of ecclesiastical dues, or the doing or neglecting to do some act relating to the church whereby damage accrues to the plaintiff, to obtain satisfaction for which he is permitted to institute a suit in the spiritual court.

PECUNIARY CONSIDERATION, (in a statute). 6 *Gray* (Mass.) 327.

PECUNIARY LEGACY.—A testamentary gift of money.

PECUNIARY PROVISION, (in a statute). 61 *Mc.* 395.

PEDAGE — PEDAGIUM.—Money given for the passing of foot or horse through any country.—*Spel. Gloss.*

PEDANEI JUDICES.—See JUDICES PEDANEI.

PEDE PULVEROSUS.—Dusty foot. Chapmen and peddlers were anciently called by this name. See COURT OF PIEDPOUDRE.

PEDIGREE.—

§ 1. Law of evidence.—In proceedings with reference to the devolution of a deceased person's property, questions as to the relationship of the claimants are called "questions of pedigree." They are subject to peculiar rules of evidence. Thus, declarations by deceased persons (see DECLARATION, § 5; *LIS MORA*); the general reputation of a family, proved by a surviving member of it; entries con-

tained in family Bibles or other books, produced from the proper custody; inscriptions on tombstones; and charts of pedigrees, made or adopted by deceased members of the family, are admissible as evidence on questions of pedigree, by way of exception to the general rule against derivative evidence. Best Ev. 633. See EVIDENCE, § 10; REPUTATION.

§ 2. **Chancery practice.**—In English Chancery practice, when a question of pedigree arises (e. g. on an inquiry as to the next of kin or heir-at-law of a deceased person), the party having the carriage of the inquiry draws up a pedigree for the use of the chief clerk.

PEDIGREE, (includes what). 77 Pa. St. 507.
—(what is evidence of). 3 Halst. (N. J.) 249; 22 Wend. (N. Y.) 277.

PEDIS ABSCISSION.—Cutting off a foot; a punishment anciently inflicted instead of death. *Fleta* l. 1, c. xxxviii.

PEDIS POSITIO (or **POSSESSIO**).
—An actual possession or foothold in lands.

PEDDLER.—A person who carries goods from place to place for sale.

PEDDLER, (defined). 47 Tex. 393, 402.
—(who is). 41 Vt. 139; 4 Barn. & Ald. 510; Burr. 612, 613.
—(who is not). 1 Barn. & Ald. 100.
—(in a statute). L. R. 8 Q. B. 302; 10 Id. 598.

PEDONES.—Foot soldiers.

PEER.—An equal; one of the same rank; a member of the House of Lords.

PEERAGE.—The English dignity of the lords, or peers of the realm. In what sense one individual can hold several peerages, may be seen from Lord Fernoy's Case, 5 H. L. Cas. 716. See LIFE PEERAGE.

PEERESS.—Women may acquire peerages by creation, descent, or marriage. The 20 Hen. VI. c. 9, declares that peeresses, either in their own right or by marriage, shall be tried before the same judicature as peers of the realm. This statute is said to be remarkable, as being the only instance of a legislative explanation of any part of *Magna Charta*. If a woman, noble in her own right, marry a commoner, she still remains noble, and shall be tried by her peers; but if she be only noble by marriage, then, by a second marriage with a commoner she loses her dignity; for as by marriage it is gained, so by marriage it is also lost. Yet, if a duchess-dowager marry a baron, she continues a duchess still, and so forth; for all the nobility are *peers*, and therefore it is no degradation. A woman, noble in her own right or by her first marriage, marrying a commoner, communicates no rank or title to her husband. 1 Inst. 326.

PEERS OF FEES.—Vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function; these were termed *peers of fees*, because holding fees of the lord, or because their business, in court was to sit and judge, under their lords, of disputes arising upon fees; but if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence, it is said, we derive our common juries and other peers.—*Cowell*.

PEINE FORTE ET DURE.—The strong and hard pain. A punishment, now happily abolished, by which a prisoner indicted for felony was compelled to put himself upon his trial. If, when arraigned, he stood mute, he was remanded to prison, and placed in a low dark chamber, and there laid on his back on the bare floor naked, unless where decency forbade; upon his body was placed as great a weight of iron as he could bear; on the first day he received no sustenance, save three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison door, and such was alternately his daily diet till he died or answered. 3 Bl. Com. 327; 2 Reeves Hist. Eng. c. ix. 134; 4 Steph. Com. (7 edit.) 391, 518.

PELA.—A peal, pile, or fort.—*Cowell*.

PELES.—Issues arising from or out of a thing.—*Jacob*.

PELFE, or **PELFRE.**—Booty; also the personal effects of a felon convict.—*Cowell*.

PELLAGE.—The custom or duty paid for skins of leather.

PELLIPARIUS.—A leatherseller or skinner.—*Jacob*.

PELLICIA.—A pilch or surplice.—*Spel. Gloss*.

PELLOTA.—The ball of a foot. 4 Inst. 308.

PELLS, CLERK OF THE.—An officer in the English Exchequer, who entered every seller's bill on the parchment-rolls, the roll of receipts, and the roll of disbursements.

PELT-WOOL.—The wool pulled off the skin or pelt of dead sheep. 8 Hen. VI. c. 22.

PEN.—The Welsh word for a high mountain.—*Camd. Brit.*

PENAL ACTION.—An action for a statutory penalty. See ACTION, § 9.

PENAL BILL.—An instrument formerly in use by which a party bound himself to pay a certain sum or sums of money, or to do certain acts, or in default thereof to pay a certain specified sum by way of penalty, thence termed a penal sum. These instruments have been superseded by bonds in a penal sum, with conditions

PENAL JUDGMENTS, (in certain statutes construed to mean "final judgments"). 1 Minn. 401.

PENAL LAWS.—Those laws which prohibit an act and impose a penalty for the commission of it. They are of three kinds: *pæna pecuniaria*, *pæna corporalis*, and *pæna exilii*. 2 Cro. Jac. 415.

PENAL LAWS, (defined). 36 Mich. 186.
 — (as used in the constitution of 1816, art. 9, § 3). 1 Ind. 315.

PENAL SERVITUDE, in English criminal law, is a punishment which consists in keeping an offender in confinement and compelling him to labor. (Steph. Cr. Dig. 2.) The only distinction between penal servitude and "imprisonment with hard labor" (*q. v.*) seems to be that the latter is carried out within the walls of a gaol, and cannot be inflicted for more than a comparatively short term of years, while penal servitude is carried out in any place appointed for the purpose by the proper authority, and may be for life, or any period not less than five years. Reg. v. Mount, L. R. 6 P. C. 291; 1 Russ. Cr. & M. 72; Stats. 16 and 17 Vict. c. 99; 20 and 21 Vict. c. 3; 27 and 28 Vict. c. 47; Prevention of Crime Act, 1879. See IMPRISONMENT, § 1; TRANSPORTATION.

PENAL STATUTES.—Those which impose penalties or punishments for an offense committed. As to the crown's power of remitting these penalties, see 22 Vict. c. 32.

PENAL STATUTES, (defined). Dwar. Stat. 642.

PENAL SUM—PENALTY.—

§ 1. A penalty or penal sum is a sum of money payable as an equivalent or punishment for an injury.

§ 2. **Statutory.**—Some penalties are imposed by law; thus, many statutes creating duties of a public nature contain provisions for the recovery of penalties against persons neglecting those duties. Some of these may be enforced by information (*q. v.*), others by an ordinary action. For an instance, see *Girdlestone v. Brighton Aquarium Co.*, 3 Ex. D. 137. See ACTION, § 10; INFORMER.

§ 3. **Penal damages.**—The damages recovered in certain actions for tort are in the nature of penalties. See DAMAGES, § 4.

§ 4. **Conventional penalties—Bonds.**—Penalties may also be agreed on by the parties. (Leake Cont. 573.) Thus, in a bond with a condition, the penalty or penal sum is a nominal sum (*e. g.* double the amount to be secured) which the obligor binds himself to pay if the condi-

tion is not complied with. When the obligee sues on it he only recovers what is due to him under the terms of the condition. As to a bond for a sum payable by installments, see *Protector Loan Co. v. Grice*, 5 Q. B. D. 592. See BOND.

§ 5. **For breach of contract.**—Where the parties to a contract agree that, in the event of a breach of its provisions, the one shall pay to the other a specified sum of money, and it appears on the true construction of the instrument, apart from the form of words used, that the sum so specified does not represent the amount of damage caused by a breach of the contract, but is merely a nominal sum, as in the case of a bond, (*supra*, § 4.) then the sum so specified is called a penalty; and if the person injured sues on the contract, he cannot recover the penalty, but only damages for the injury which he has actually sustained. (Chit. Cont. 807; Leake Cont. 573.) For examples, see DAMAGES, § 2.

PENALTY, (defined). Minor (Ala.) 209, 227; 4 Lans. (N. Y.) 136; 1 Robt. (N. Y.) 391; 1 Dak. T. 287.

— (what is). 7 Wheat. (U. S.) 17; 13 Abb. (N. Y.) Pr. 225, 237.

— (what is not). 24 Wend. (N. Y.) 244; 2 T. R. 33.

— (does not import punishment of the person). 3 Harr. (Del.) 77.

— (is a debt). 3 Serg. & R. (Pa.) 254.

— (inflicted by statute). Carth. 252.

— (an act prohibited in a statute under).

7 Conn. 181; Dwar. Stat. 678.

— (in an agreement). 19 Cal. 676, 681; 6 Barn. & C. 216; 3 Bos. & P. 630; 1 Holt N. P. 45 n.; Fess. Pat. 357.

PENALTY, BY WAY OF, (in a bond). 1 II. Bl. 227.

PENALTY FOR NON-PERFORMANCE, (in an agreement). 13 East 345.

PENALTY OR FORFEITURE, COVENANT SECURED BY, (distinguished from covenants in general). 4 Burr. 2227.

PENALTY, QUESTIONS EXPOSING TO.—In cross examination of witnesses, and also in involuntary depositions, these questions need not be answered, the privilege of witnesses extending to exempt them from answering them. *Sidebottom v. Adkins*, 5 W. R. 743.

PENALTY, REASONABLE, (promise to give bond in). Cro. Jac. 662.

PENALTY, RELIEF AGAINST.—Whenever a penalty or a forfeiture is in-

serted in any written instrument, merely to secure the performance of some act, equity regards the performance of the act as the substantial and principal intent of the instrument, and accordingly relieves (in the general case) against the penalty or the forfeiture upon the substantial performance of the act, or upon the payment of adequate damages for its non-performance. This is the principle underlying the relief given in equity from the penalty of a bond; and the same principle has been extended (at least in cases other than those arising upon leases between landlord and tenant) to forfeiture clauses also; and even in the case of leases, equity will relieve from the forfeiture in a few limited cases, *e. g.* from forfeiture for the unpunctual payment of rent, or for the technical non-repair (there being a substantial repair) of the premises, and (under statute) from breach of covenant to insure, in each instance upon equitable terms. (*See* Snell Eq. (5 edit.) 337-343.)—*Brown*.

PENANCE.—An ecclesiastical punishment affecting the body of the penitent, by which he is obliged to give public satisfaction to the church for the scandal which he has given by his evil example; an open confession generally forms part of the penance, while in some cases the penance may be commuted for a sum of money to be applied for pious uses. But in modern times this punishment is rarely enforced. Phillim. Ecc. L. 1367, where instances are given. *See* CENSURE.

PENDENCY—PENDENT—PENDENTE LITE.—An action, arbitration or other proceeding is said to be pendent after it has been commenced and before the final judgment or award has been given. Pendency is the state of being pendent. "*Pendente lite*" means during the pendency of a suit. *See* ALIMONY; ALLOWANCE, § 2; GRANT, § 8; *LIS ALIBI PENDENS*; *LIS PENDENS*.

Pendente lite nihil innovetur (Co. Litt. 344): During a litigation nothing new should be introduced.

PENDENTES.—In the civil law, ungathered fruits. *See* FRUCTUS PENDENTES.

PENDING, (when legal proceedings are). 43 N. H. 207; 2 Browne (Pa.) 146; 2 Wheel. Am. C. L. 508.

— (in the constitution). 41 N. Y. 159.

— (in act of congress). 3 Cliff. (U. S.) 371.

PENDING IN THE COURT, (what is). 71 Pa St. 170.

PENERARIUS.—An ensign-bearer—*Cowell*.

PENETRATION.—A term used in criminal law, and denoting (in cases of alleged rape) the insertion of the male part into the female parts to however slight an extent; and by which insertion the offense is complete without proof of emission.—*Brown*.

PENITENTIARY.—A prison where criminals are confined with (or without) hard labor. 19 Geo. III. c. 74. *See* GAOL.

PENNON.—A standard, banner, or ensign carried in war.

PENNY.—An English coin, being the twelfth part of a shilling. It was also used in America during the colonial period.

PENNYWEIGHT.—Twenty-four grains, troy weight.

PENSAM.—The full weight of twenty ounces. {

PENSION.—An annuity from government for services rendered in the past. In England, when a pension is granted by the government to one, who though not for the time engaged in any active duties is still liable to be called to active service, and is therefore to be considered in the service of the government, as in the case of an officer on half-pay, the pension cannot be assigned, attached or otherwise made liable to his debts. But a pension granted entirely as a compensation for past services may be assigned by the grantee, or it may be taken in execution by his creditors. *Willcock v. Terrell*, 3 Ex. D. 323, and the cases there cited.

PENSION, (defined). 15 Cal. 556.

PENSION OF CHURCHES.—Certain sums of money paid to clergymen in England in lieu of tithes. A spiritual person may sue in the spiritual court for a pension originally granted and confirmed by the ordinary; but where it is granted by a temporal person to a clerk, he cannot; as if one grant an annuity to a parson, he must sue for it in the temporal courts. *Cro. Eliz.* 675.

PENSION OF THE INNS OF COURT.—An annual payment made by each

member to the houses. Also, that which in the two Temples is called a "parliament," and in Lincoln's Inn a "council," is, in Gray's Inn, termed a "pension," being an assembly of the benchers, to consult upon the affairs of the society. See INNS OF COURT.

PENSIONER.—

§ 1. One who is supported by an allowance at the will of another; a dependent; he who receives an annuity from government without filling any office.

§ 2. A band of gentlemen who, in England, attend as a guard on the royal person. It was instituted A. D. 1539; each gentleman has an allowance of £150 *per annum*, and two houses. This band is now called the "Honorable Body of Gentlemen-at-Arms."

§ 3. A member of a college at Cambridge who is not on the foundation.

PENSION-WRIT.—A process formerly issued against a member of an inn of court, when he was in arrear for pensions, commons, or other duties, &c.—*Cowell*.

PENTECOSTALS.—Pious oblations made at the feast of Pentecost by parishioners to their priests; and sometimes by inferior churches or parishes to the principal mother churches. They are also called "Whitsun-farthings."

PENULTIMATE JUDGMENT, (what is). 7 Conn. 431, 447.

PEOPLE.—The many, the multitude, the inhabitants of a nation, state, town, &c.; the state or nation in its collective or political capacity; the commonalty or common folk, as distinguished from the higher classes; men; individuals.—*Richard. Dict.*

PEOPLE, (means governing power of the country). 4 T. R. 783, 788.

— (in a grant). 8 Johns. (N. Y.) 385.

PEPPERCORN RENT.—See RENT.

PER.—By; through; during. As to actions in the *per*, see WRIT OF ENTRY.

PER AES ET LIBRAM.—See MANCIPTATIO.

PER AND POST.—To come in the *per* is to claim by or through the person last entitled to an estate, as the heirs or assigns of the grantee; to come in the *post* is to claim by a paramount and prior title, as the lord by escheat.

PER ANNULUM ET BACULUM.—See ANNULUS ET BACULUS.

PER ANNUM.—By the year. A phrase still in common use.

PER AUTRE VIE.—See TENANT FOR LIFE.

PER CAPITA—PER STIRPES.—

When property is given to the descendants or relations of two or more persons, the question frequently arises whether the donees are to take *per stirpes*, *i. e.* as representatives of their respective ancestors or relations; or *per capita*, *i. e.* whether they together form one class, each member of which is to take an equal share. The question chiefly arises in gifts to descendants. According to the English rule, which obtains in some of the States, if a testator leaves property to his issue and dies leaving children who are living, and grandchildren who are the issue of deceased children, then the property is divided *per capita*, *i. e.* each child and grandchild takes an equal share of the whole. (2 Jarm. Wills 101, 194.) But if there is a gift to two or more persons, with a substitutional gift to the children of such of them as shall die before the gift takes effect, then the distribution takes place *per stirpes*. (*Id.* 195.) Thus, if there were three original donees, A., B. and C., and B. has died leaving three children, and C. has died leaving two children, the property is divided into three parts, one going to A., another to B.'s three children, and the third to C.'s two children. The expressions *per capita* and *per stirpes* are also used in the law of descent and distribution with reference to the rule of representation. See DESCENT; DISTRIBUTION; NEXT OF KIN; REPRESENTATION.

PER CAPITA, (in a will). L. R. 5 Eq. 51.

PER, CUI and POST.—Writs of entry, now abolished. See WRIT OF ENTRY.

PER CURIAM.—By the court. A phrase frequently used in the reports, to distinguish a decision or opinion of the court from that of a single judge. *Per curiam* opinions are generally shorter and less argumentative than those rendered by a single judge, as the representative of the majority of the court.

PER EUNDEM.—This phrase is commonly used to express, "by, or from the mouth of, the same judge."

Per eundem, in eadem [subaudi, "causa"]: By the same judge, in the same case.

PER FORMAM DONI.—By the form of the gift. By the direction of the donor, and not by operation of the law.

PER FRAUDEM.—By fraud. A replication to a plea by which something which appears to be a discharge is set up, but which the replication claims is tainted by fraud, and therefore is invalid.

PER INCURIAM.—Through want of care.

PER INFORTUNIUM.—By mischance. See **HOMICIDE**, § 3.

PER MILE, (in an agreement). 27 Vt. 766.

PER MINAS.—By threats. See **DURESS**, § 1.

PER MY ET PER TOUT.—This phrase is applied to joint tenants who are said to be seised *per my et per tout*; i. e. by the half or moiety and by all; i. e. they each have the entire possession as well of every parcel or piece of the land as of the whole considered in the aggregate. For one of them has not a seisin of one-half or moiety, and the other of the other half or moiety; nor can one be exclusively seised of one acre and his companion of another, but each has an undivided half or moiety of the whole, and not the whole of an undivided moiety. See **JOINT TENANCY**.

PER PAIS TRIAL.—Trial by the country (i. e. by jury). See 3 Steph. Com. (7 edit.) 513.

PER QUÆ SERVITIA.—A real action by which the grantee of a seignory could compel the tenants of the grantor to atton to himself. (Shep. Touch. 254.) It was abolished by Stat. 3 and 4 Will. IV. c. 27, § 35. See **ATTORNEYMENT**.

PER QUOD.—Whereby. In the common law system of pleading the *per quod* is that part of the declaration in which the plaintiff states the special damage which the wrongful act of the defendant has caused him, as in an action for slander. See **DAMAGE**, § 3.

PER QUON, (in pleading). 3 Barr. 1879; 1 Ld. Raym. 102.

PER QUOD CONSORTIUM AMISIT.—Whereby he lost the benefit of her society. An allegation of special damage introduced into the declaration in actions by husbands for injuries to their wives, as for beating, false imprisonment, &c.

PER QUOD SERVITIUM AMISIT.—Whereby he lost the benefit of her service. See **SEDUCTION**; **SERVICE**.

Per rationes pervenitur ad legitimam rationem (Litt. § 386): By reasoning we come to true reason.

PER SE.—By itself, taken alone. Thus, in slander certain words are said to be actionable *per se*, i. e. no special damage need be proved in order to recover for the speaking them.

PER STIRPES.—By the right of representation—literally, according to the stocks. See **PER CAPITA**.

PER STIRPES, (in a will). 8 Beav. 214; 14 L. J. Ch. N. s. 150; L. R. 5 Eq. 51.

PER STIRPES, SUCCESSION, (defined). 2 Dev. (N. C.) Eq. 509, 513.

PER TOTAM CURIAM.—By the voice or judgment of the whole court.

PER UNIVERSITATEM.—By the whole. Used in the civil law, of the acquisition of any property as a whole, in opposition to an acquisition by parts: e. g. the acquisition of an inheritance, or of the separate property of the son (*peculium*), etc. (Calv. Lex. Universitas.)—Bouvier.

Per varios actus legem experientia fecit (4 Inst. 50): By various acts experience framed the law.

PER VERBA DE FUTURO—PER VERBA DE PRÆSENTI.—When a man and woman contract marriage in Scotland [or in New York] by the interchange of words, in which each saith, in the presence of two or more witnesses, that he takes the other for husband or wife, respectively, this is a complete marriage *per verba de præsenti*; in contradistinction to the marriage *per verba de futuro*; in which case there is a contract or promise to marry, each saying, I promise, &c., and this promise, in the Scotch law, is ratified and the marriage is completed by the mere act of cohabitation, or the "*subsequens copula*."—Wharton.

PER YEAR, (equivalent to "annually"). 33 N. Y. 211.

PERAMBULATION.—The act of walking over the boundaries of a district or piece of land, either for the purpose of determining them or of preserving evidence of them. Thus, in many parishes in England, it is the custom for the parishioners to perambulate the boundaries of the parish in Rogation Week in every year. Such a custom entitles them to enter any man's land and abate nuisances in their way. Phillim. Ecc. L. 1867; Hunt Bound. 103; see, also, Britt. 124b; 4 Inst. 302. See **PURLU**.

PERAMBULATIONE FACIENDA.—See **DE PERAMBULATIONE FACIENDA**.

PERANGARIA.—See **ANGARIA**.

PERCA.—A perch of land; sixteen and one half feet. See **PERCH**.

PERCAPTURA.—A place in a river properly banked for the better preserving and taking of fish.—*Par. Ant.* 120.

PERCEPTION.—Taking into possession; thus, perception of crops or of profits is reducing them to possession.—*Abbott*.

PERCH.—A measure of land, consisting of five yards and a half of the standard measure. 6 Geo. IV. c. 74.

PERCULATE, (defined). 7 Nev. 363.

PERDINGS.—Men of no substance. *Leg. Hen. I.* c. 29.

PERDONATIO UTLAGARIÆ.—A pardon for a man who, for contempt in not yielding obedience to the process of a court, is outlawed, and afterwards of his own accord surrenders. (*Reg. Orig.* 28.)—*Wharton*.

PERDUELLIO.—In the civil law, treason.

PERDURABLE.—OLD FRENCH: *perdurable*, eternal, from Latin, *per* (intensive), and *durabilis*, lasting. *Littre Dict s. v.*

As applied to an estate, perdurable signifies lasting long or forever. Thus, a disseisor or tenant in fee upon condition has as high and great an estate as the rightful owner or tenant in fee-simple absolute, but not so perdurable. The term is chiefly used with reference to the extinguishment of rights by unity of seisin, which does not take place unless both the right and the land out of which it issues are held for equally high and perdurable estates. *Co. Litt.* 313a, b; *Gale Easem.* 582.

PEREGRINI.—In the civil law, foreigners commorant or sojourning in Rome.

PEREMPT.—In ecclesiastical procedure an appeal is said to be perempted when the appellant has by his own act waived or barred his right of appeal, as where he partially complies with or acquiesces in the sentence of the court. *Phillim. Ecc. L.* 1275; *Rog. Ecc. L.* 47; *Macph. Jud. Com.* 202.

PEREMPTION.—A nonsuit, also a quashing or killing. *See* NONSUIT.

PEREMPTORILY, (in a rule of court). 1 *Dowl. Pr. C.* 120.

PEREMPTORY.—An order, writ or other judicial command, is said to be peremptory when no excuse for non-compliance with it is admitted. Thus, a peremptory order for time is final, and the party must either take the step within the time

fixed by it, or incur the consequences of not doing so.

PEREMPTORY CHALLENGE.—A privilege allowed to a prisoner in criminal cases, or at least in capital ones, *in favorem vite*, to challenge a certain number of jurors, *without showing any cause for so doing*. *See* CHALLENGE, § 2.

PEREMPTORY DAY.—A precise time when certain business by rule of court ought to be spoken to; but if it cannot be spoken to then, the court, at the prayer of the party concerned, will give a further day without prejudice to him.

PEREMPTORY MANDAMUS.—When a *mandamus* has issued commanding a party either to do a certain thing or to signify some reason to the contrary, and the party to whom such writ is directed returns or signifies an insufficient reason, then there issues in the second place another *mandamus*, termed a “peremptory *mandamus*,” commanding the party to do the thing absolutely, and to which *no other return will be admitted but a certificate of perfect obedience* and due execution of the writs. *See* MANDAMUS, § 2.

PEREMPTORY ORDER FOR TIME TO PLEAD.—*See* PEREMPTORY.

PEREMPTORY PAPER.—A list of the causes which were enlarged at the request of the parties, or which stood over from press of business in court to a day which was specified in the paper, *and which day was peremptory*. *See* PAPER.

PEREMPTORY PLEAS.—Pleas in bar are so termed in contradistinction to that class of pleas called “dilatory pleas.” Peremptory pleas are usually pleaded to the merits of the action with the view of raising a material issue between the parties; whilst dilatory pleas are generally pleaded with the view of retarding the plaintiff’s proceedings, and not for the purpose of raising an issue upon which the parties may go to trial and settle the point in dispute. Peremptory pleas are called, also, *in bar*, while dilatory pleas are said to be *in abatement* only. *See* ABATEMENT; PLEAS, § 4.

PEREMPTORY RULE TO DECLARE.—When the plaintiff in an action was not ready to declare within the time limited,

and the defendant wished to compel the plaintiff to declare, he procured what was termed a peremptory rule to declare, which was in the nature of an order from the court, compelling the plaintiff to declare *peremptorily under pain of judgment of non pros. being signed against him*. But by the C. L. P. Act, 1852, § 53, rules to declare, or declare peremptorily, were abolished, and instead thereof a notice was to be given requiring the opposite party to declare, otherwise judgment; and under the present practice, the court would make an order upon the plaintiff to deliver his statement of claim *peremptorily on a day specified*, otherwise judgment dismissing the action.

PEREMPTORY UNDERTAKING.—

The court will, in some cases, set aside a judgment for not proceeding to trial, upon payment of costs, and a peremptory undertaking to try at the next sittings or assizes, especially where the plaintiff had been delayed on account of his witnesses, or the like. (2 Chit. Arch. Pr. (12 edit.) 1509.)—*Wharton*.

PEREMPTORY WRIT.—An original writ, called from the words of the writ, *a si te fecerit securum*, and which directed the sheriff to cause the defendant to appear in court without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim. The writ was very occasionally in use, and only where nothing was specifically demanded, but only a satisfaction in general; as in the case of writs of trespass on the case, wherein no debt or other specific thing was sued for, but only damages to be assessed by a jury. (1 Arch. Pr. 205.)—*Brown*.

PERFECT.—(1) Complete; as a perfect obligation, *i. e.* one which is in all respects enforceable. (2) To make complete; as to perfect an appeal, or to perfect bail.

PERFECT CONDITION, (of debt sought to be set off). 82 N. Y. 17.

PERFECT TITLE, (defined). 21 Conn. 444.

PERFECT TRUST.—An executed trust. See **EXECUTED TRUST**.

PERFECTING BAIL.—Certain qualifications of a property character being required of persons who tender themselves as bail, when such persons have justified, *i. e.* established their sufficiency by satisfying the court that they possess the requisite qualifications, a rule or order of court is made for their allowance, and the bail is then said to be perfected, *i. e.* the process of giving bail is finished or completed. See **BAIL**, § 3.

PERFECTLY GOOD, (as equivalent to "responsible"). 7 Vt. 67

Perfectum est cui nihil deest secundum suæ perfectionis vel naturæ modum (Hob. 151): That is perfect which wants nothing, according to the measure of its perfection or nature.

PERFIDY.—The act of one who has engaged his faith to do a thing, and does not do it, but does the contrary. (Wolff, § 390.)—*Bouvier*.

PERFORMANCE.—

§ 1. **Of contract, or condition.**—With reference to a contract or condition, performance is the act of doing that which is required by the contract or condition. The effect of performance, in the case of a contract, is to discharge the person bound to do the act from liability, and, in the case of a condition, to create or establish the right dependent on the condition. Thus, where A. contracts to supply goods to B., he is not only bound to supply them, but he cannot claim their price until he has done so (condition precedent); if he performs the contract by supplying them, he discharges his liability, and at the same time entitles himself to claim their price.

§ 2. **Partial performance** is where the contract, &c., is not fully performed; it is only in a few instances that this gives rise to any rights by the performing person. Chit. Cont. 686. See **APPORTIONMENT**; **FREIGHT**; **QUANTUM MERUIT**; **QUANTUM VALEBANT**.

§ 3. **Part performance** is where the contract has been partly carried into effect; what is called the doctrine of part performance, is the rule that where a contract is not enforceable for want of some formality, (*e. g.* by reason of not being in writing, as required by the statute of frauds,) and it has been partly carried into effect by one of the parties, the other cannot set up the informality as a defense; as where possession has been taken under a parol contract for the sale of land. Chit. Cont. 278; Poll. Cont. 557. As to performance generally, see *Leake Cont. 435*. See **PART PAYMENT**.

§ 4. **In equity**, the doctrine of performance is applied to cases where A. has covenanted to purchase and settle or leave by will property in favor of B., and B. has obtained the benefit stipulated for, although the covenant has not been strictly perform-

ed. Thus, where A. covenanted to purchase lands of £200 a year, and settle them on his wife and the children of the marriage, and purchased lands of that value, but did not settle them, it was held that this was a performance of his covenant, and that the eldest son was therefore not entitled to have both the benefit of the lands which had descended to him as heir-at-law and to have the covenant performed by the purchase of other land. *Haynes Eq.* 346; *Snell Eq.* 184; 2 *White & T. Lead. Cas.* 879. See DISCHARGE; ESSENCE OF THE CONTRACT; PAYMENT; SATISFACTION.

PERFORMANCE, (in statute of frauds). 55 Mo. 97.

PERFORMANCE OF AN AGREEMENT, (what is). 3 *Atk.* 3.

PERFORMANCE, PART, (in statute of frauds). 1 *Bro. Ch.* 412.

— (what is not). 3 *Bro. Ch.* 400; 1 *Sch. & L.* 41.

PERFORMANCE THEREOF, IN CONSIDERATION OF THE, (in a covenant). 2 *Saund.* 155.

PERFORMED, (in statute of frauds). 13 *Wend. (N. Y.)* 309; 11 *East* 142.

PERFORMING, WELL AND TRULY, (in a covenant). 1 *H. Bl.* 273 n.

PERICULOSUS.—Dangerous; perilous.

Periculosum est res novas et inusitatas inducere (Co. Litt. 379a): It is perilous to introduce new and untried things.

Periculosum existimo quod bonorum virorum non comprobatur exemplo (9 Co. 97 b): I consider that dangerous which is not approved by the example of good men.

PERICULUM.—Peril; danger; hazard; risk.

Periculum rei venditæ, nondum traditæ, est emptoris: The risk of a thing sold, and not yet delivered, is the purchaser's.

PERIL, (synonymous with "danger"). 8 *Serg. & R. (Pa.)* 539.

PERIL, ALL OTHER, (in a policy of insurance). 4 *East* 403.

PERIL OF THE RIVER, (in a policy of marine insurance). 4 *Bush (Ky.)* 289.

— (does not include "fire"). 19 *How. (U. S.)* 312.

PERILS OF THE SEA.—These are strictly the natural accidents peculiar to the water, but the law has extended this phrase to comprehend events not attributable to natural causes, as captures by pirates, and losses by collision, where no blame is attachable to either ship, or at

all events to the injured ship. The word "peril," like "*periculum*," from which it is derived, is in itself ambiguous, and sometimes denotes the risk of inevitable mischance, and sometimes the danger arising from the want of due circumspection. *Jones Bailm.* 98. Consult 2 *Arn. Ins.* (3 edit.) 687 *et seq.* See INSURANCE, § 3; RISK.

PERILS OF THE SEA, (defined). 27 *Me.* 132; *Bail. Perils Sea* 6.

— (what are). 8 *Pet. (U. S.)* 585; 20 *Ohio* 199.

— (equivalent to "dangers of the river"). 3 *Stew. & P. (Ala.)* 135.

— (what is a loss by). 1 *Johns. (N. Y.)* 241.

— (in maritime law). 6 *Cow. (N. Y.)* 266.

— (in a bill of lading). 19 *How. (U. S.)* 162.

— (in an insurance policy). 14 *Pet. (U. S.)* 99; 3 *Wash. (U. S.)* 159; 9 *Allen (Mass.)* 307, 308; 56 *Barb. (N. Y.)* 442; 21 *Wend. (N. Y.)* 190.

PERINDE VALERE.—A dispensation granted to a clerk, who, being defective in capacity for a benefice or other ecclesiastical function, is *de facto* admitted to it. (*Gibs.* 87; 25 *Hen. VIII. c. 21.*)—*Cowell.*

PERINDINARE.—To stay, remain, or abide in a place.

PERIOD.—Any portion or space of time. "The word 'period' has its etymological meaning, but it also has a distinctive signification, according to the subject with which it may be used in connection. It may mean any portion of complete time, from a thousand years or less to the period of a day; and when used to designate an act to be done or to be begun, though its completion may take an uncertain time, as for instance, the act of exportation, it must mean the day on which the exportation commences, or it would be an unmeaning and useless word in its connection in the statute." *Wayne, J., in Sampson v. Peaslee*, 20 *How. (U. S.)* 579.

PERIPHRAISIS.—Circumlocution; use of many words to express the sense of one.

PERISHABLE, (defined). 31 *Conn.* 495.

— (in New York code). 1 *Civ. Pro. (N. Y.)* 384, 387 n.; 62 *How. (N. Y.)* Pr. 511.

PERISHABLE ARTICLES, (in an insurance policy). 7 *Cow. (N. Y.)* 202.

PERISHABLE GOODS.—Goods which decay and lose their value if not consumed soon; fish, fruit and the like. By the English Judicature Act, 1875, Ord. LII. r. 2, such goods, when the subject of an action, may, by order of the court or a judge, be sold. Similar statutory provisions exist in the different American jurisdictions.

PERISHABLE PROPERTY, (what is). 3 Munf. (Va.) 288.

— (what is not). 54 Ill. 58.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt (3 Inst. 166): They are perjured, who, preserving the words of an oath, deceive the ears of those who receive it.

PERJURY.—

§ 1. An assertion willfully made upon an oath or affirmation duly administered in a judicial proceeding pending before a competent court, of the truth of some matter of fact material to the question depending in that proceeding, which assertion the person making it does not believe to be true, or on which he knows himself to be ignorant. (Steph. Cr. Dig. 82.) In some cases a false oath amounts to perjury, although not taken in a judicial proceeding. See Arch. Pr. 851, 864.

§ 2. The evidence of two witnesses at least is required to support a conviction for perjury. 4 Steph. Com. 427. See AFFIRM, § 3; DECLARATION, § 6; FALSE SWEARING; OATH; SUBORNATION OF PERJURY.

PERJURY, (defined). 1 Sprague (U. S.) 558; 44 Ala. 81; 2 Conn. 40, 47; 2 Metc. (Ky.) 10; 11 Allen (Mass.) 243; 39 Miss. 541.

— (what constitutes). 4 McLean (U. S.) 113; 73 Mo. 549; 9 Tex. App. 283.

— (what is not). 8 Ala. 510.

PERKINS.—The author of the "profitable boke" on the learning of conveyancing; as valuable a performance as any, perhaps, of the reign of Hen. VIII. This was first printed in 1532, with the following title: "Incipit perutilis Tractatus Magistri Jo. Perkins Interioris Templi Socii, &c." This book is in French. 4 Reeves Hist. Eng. Law c. xxx., 120.

PERMANENT, (of a sidewalk). 6 Cush. (Mass.) 224.

— (an injury to land may be, without continuing forever). 1 Gr. (N. J.) Ch. 154.

PERMANENT, (in a statute). 8 Barb. (N. Y.) 174.

PERMANENT ABODE, (in election act). 78 Ill. 170.

PERMANENT BUILDING SOCIETY.—See BUILDING SOCIETY, § 4.

PERMANENT POLICY, (defined). 23 How. (N. Y.) Pr. 448.

PERMANENT SICKNESS, (of a witness to make his deposition admissible). L. R. 1 C. P. 713.

PERMANENT TRESPASS.—See CONTINUENDO; TRESPASS.

PERMANENTLY, (defined). 12 Bush (Ky.) 541.

PERMISSION, (words of, in a charter). 5 Barn. & Ald. 691, 692; 1 Dowl. & Ry. 148; 2 Id. 176.

PERMISSIONS.—Negations of law, arising either from the law's silence, or its express declaration. Ruth. Nat. Law, b. l. c. i.

PERMISSIVE USE.—A passive use which was resorted to before the Statute of Uses, in order to avoid a harsh law, as that of mortmain or a feudal forfeiture; it was a mere invention in order to evade the law by secrecy, as a conveyance to A. to the use of B.; A. simply held the possession, and B. enjoyed the profits of the estate. See USES.

PERMISSIVE WASTE.—See WASTE.

PERMIT.—A license or instrument granted by the officers of customs, certifying that the duties on certain goods have been paid, or secured, and permitting their removal from some specified place to another.

PERMIT, (defined). 9 Allen (Mass.) 271.

— (in a statute). 83 N. Y. 471.

— (in a will). 2 Taunt. 109.

PERMIT DRUNKENNESS, (in licensing act). 2 C. P. D. 74.

PERMIT HER TO RECEIVE, (in a will). 1 Rawle (Pa.) 231; 1 Whart. (Pa.) 520; 2 Id. Raym. 873.

PERMITTING AND SUFFERING, (not synonymous with knowing of and being privy to). 6 Barn. & C. 295, 303.

PERMUTATION, or BARTER.—The exchange of one movable subject for another. See BARTER.

PERMUTATIONE, &c.—A writ to an ordinary, commanding him to admit a clerk to a benefice upon exchange made with another.—Reg. Orig. 307.

PERNANCY—PERNOR.—Pernancy is the act of taking or receiving rents or other profits of land; the person who takes them is called the "pernor." (Co. Litt. 323b, 351a.) The terms are now antiquated. From Norman-French, *pernour*; (Britt. 36b;) from *prendre*; Latin, *prendere*, to seize.

PERPARS.—A part of the inheritance. —*Fleta*.

PERPETRATOR, (in a statute). 33 Iowa 47.

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quæ abrogationem excludit, ab initio non valet (Bacon): It is an everlasting law, that no positive human law shall be perpetual; and any part of an enactment which purports to admit of no repeal, is void from the first.

PERPETUAL.—That which is continuous; enduring; lasting; something unlimited in respect of time. as a perpetual statute.

PERPETUAL ADVOWSON, (in a will). 6 J. B. Moo. 159.

PERPETUAL CURATE.—*See* CURATE.

PERPETUAL CURATE, (who is). 2 Steph. Com. 682, 683.

PERPETUAL INJUNCTION.—Opposed to an injunction *ad interim*; an injunction which finally disposes of the suit, and is indefinite in point of time. *See* INJUNCTION, § 3.

PERPETUATING TESTIMONY.—

§ 1. A statutory method of preserving evidence to be used on some future occasion, where the witnesses are aged or infirm, or about to depart from the jurisdiction, and a trial cannot be had in time to procure their attendance in the regular way. In such cases it is usual to file a bill in equity to perpetuate and preserve the testimony of such witnesses; and the court then usually empowers certain persons to examine such witnesses, and to take their depositions. The evidence so taken is then available on any future trial, if the witness or witnesses should in the mean time have died, but not otherwise.

§ 2. By the Stat. 5 and 6 Vict. c. 69, any person who would, under circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honor, title, dignity or office, or to any estate or interest in

any property, real or personal, the right or claim to which he cannot bring to trial before the happening of that event, might file a bill in chancery to perpetuate any testimony material for establishing his claim. In a proper case, the court made an order that the witnesses whose testimony was required should be examined, cross-examined and re-examined in the usual way, and, when this had been done, the cause was at an end. (Dan. Ch. Pr. 1419; Haynes Eq. 174; Snell Eq. 490.) This jurisdiction has been transferred to the High Court of Justice in the Chancery Division. (Judicature Act, 1873, § 16.) Bills to perpetuate testimony as to legitimacy were formerly of not unfrequent occurrence; but now the same object may be attained under the Legitimacy Declaration Act. Dan. *See* DE BENE ESSE; LEGITIMACY, § 2.

PERPETUITY.—

§ 1. Perpetuity properly signifies a disposition of property by which its absolute vesting is postponed forever; as, for instance, if property were conveyed to trustees upon trust to pay the income to A. for life, and after his death to his eldest son for life, and after his death to his eldest son, and so on. Such dispositions are contrary to the policy of the law, because they "tie up" property and prevent its free alienation. Accordingly, it has long been a rule in the law relating to contingent remainders, that an estate cannot be given to an unborn person for life, followed by any estate to any child of such unborn person. (Wms. Real Prop. 276.) But the rule which is commonly known as the rule against perpetuities is that applicable to executory interests (*q. v.*); it forbids any disposition by which the absolute vesting of property is or may be postponed beyond the period of the life or lives of any number of persons (sometimes limited to two persons) living at the date of the disposition, and the further period of twenty-one years and a fraction, after the death of the survivor. (*Id.* 320; Wats. Comp. Eq. 748.) Thus, property may be given upon trust for A. for life, and after his death for such of his children as attain twenty-one, which would let in a posthumous child.

§ 2. Hence, "perpetuity" has come to mean any disposition which is void, because it infringes this "rule against perpetuities," such as a gift to A. for life, and after his death to such of his children as shall attain twenty-five. *Leake v. Robinson*, 2 Meriv. 368.

§ 3. The principal exceptions to the rule are estates tail and limitations following estates tail (*q. v.*), charitable dispositions, and grants of property to particular families for public services. Wats. Comp. Eq. 748. See APPOINTMENT, § 1; MORTMAIN; REMOTENESS.

PERPETUITY, (defined). 5 Otto (U. S.) 312; 2 P. Wms. 688.

— (in the recital of a prospectus). 4 La. Ann. 109.

PERPETUITY OF THE KING.—That fiction of the English law which for certain political purposes ascribes to the king in his political capacity the attribute of immortality; for though the reigning monarch may die, yet by this fiction the king never dies; *i. e.* the office is supposed to be re-occupied for all political purposes immediately on his death.

PERQUISITE.—(1) Something gained by a place or office over and above the stated wages; (2) anything gotten by industry or purchased with money different from that which descends from a father or ancestor; (3) fines of copyholds, heriots, amercements, &c.

PERQUISITOR.—A searcher.

PERSON.—

§ 1. In jurisprudence, a person is the object of rights and duties, *i. e.* capable of having rights and of being liable to duties, while a thing is the subject of rights and duties. See Holl. Jur. 64.

§ 2. **Natural—Artificial.**—Persons are of two kinds, natural and artificial. A natural person is a human being. (See MONSTER.) Artificial persons include (1) a collection or succession of natural persons forming a corporation (*q. v.*); (2) a collection of property to which the law attributes the capacity of having rights and duties. The latter class of artificial persons is only recognized to a limited extent in our law; examples are—the estate of a bankrupt or deceased person, and the assets of a company or partnership. As to the Roman law on the subject, see Hunt. Rom. L. 169, 559; 1 Holtz. Encycl. 274. See PERSONALTY; STATUS.

PERSON, (defined). 4 Cal. 304; 1 Bradw. (Ill.) 399; 1 Bl. Com. 123.

— (when includes corporation). 3 Biss. (U. S.) 480; 12 Pet. (U. S.) 102; 11 Wheat. (U. S.) 392; 13 Bankr. Reg. 199, 203; 10 Ill. 48; 22 Id. 9; 12 Cush. (Mass.) 59; 7 How. (Miss.)

508; 1 Abb. (N. Y.) App. Dec. 199; 25 Ohio St. 217; 18 Am. Rep. 291; Bright. (Pa.) 121; 15 Serg. & R. (Pa.) 176; 4 Humph. (Tenn.) 157; 36 Tex. 648; 27 Gratt. (Va.) 110; 10 Wis. 351.

PERSON, (when does not include corporation). 8 Md. 95; 11 Metc. (Mass.) 129; 4 Halst. (N. J.) Ch. 592; 24 Ohio St. 611; 4 Cent. L. J. 174.

— (the State is). 24 Tex. 61.

— (does not include a State or a nation). 52 N. Y. 530.

— (does not include the federal government). 4 Otto (U. S.) 315.

— (in act of congress, includes "Indian"). 5 Dill. (U. S.) 453; 2 Sawy. (U. S.) 364.

— (in a statute, includes both "natural and artificial"). 8 Port. (Ala.) 404.

— (in marriage settlement). 1 Russ. 303, 366.

— (in a statute). 69 Ind. 273; 5 Abb. (N. Y.) Pr. 316; 27 Barb. (N. Y.) 238; 56 Id. 27, 46; 1 Cow. (N. Y.) 513; 6 Hill (N. Y.) 33, 38; 15 Johns. (N. Y.) 358; 20 N. Y. 210; 22 Id. 44, 352; 1 App. Cas. 82, 90; 5 Id. 857; 3 C. P. D. 377, 380; 2 Q. B. D. 131; 4 Id. 313; 5 Id. 310.

PERSON AGGRIEVED, (in bankruptcy act). 11 Ch. D. 56; 12 Id. 308; 14 Id. 71; 16 Id. 497.

PERSON, ANY, (in a statute). 5 Abb. (N. Y.) Pr. N. s. 73; 3 Daly (N. Y.) 70.

PERSON, ANY INJURED, (applies to damage to property). 12 Metc. (Mass.) 291.

PERSON, ANY OTHER, (in statute). 15 Wend. (N. Y.) 147.

PERSON APPOINTED TO ANY OFFICE, (in a statute). L. R. 9 Q. B. 433.

PERSON BY WHOSE ACT OR DEFAULT, (in act relative to nuisances). L. R. 3 Q. B. 251.

PERSON, DAMAGE TO THE, (in a statute, does not include breach of promise of marriage). 4 Cush. (Mass.) 408.

PERSON DREAMING HIMSELF AGGRIEVED, (in copyright act). L. R. 4 Q. B. 715.

PERSON ENTITLED TO VOTE, (in election law). L. R. 4 Q. B. 147.

PERSON IN CHARGE, (in merchant shipping acts). L. R. 6 Q. B. 280.

PERSON, INDECENT EXPOSURE OF.—See INDECENT EXPOSURE.

PERSON, INJURIES TO THE, (in a statute). 4 How. (N. Y.) Pr. 234.

PERSON OCCUPYING, (in a statute). 5 Abb. (N. Y.) Pr. N. s. 445, 449.

PERSON OR PERSONS, (may include corporations). Wilberf. Stat. L. 131.

— (in a statute). 3 C. P. D. 377.

PERSON, OTHER, (in a statute). 10 R. I. 79; 5 Barn. & C. 611; 7 Id. 596, 599.

PERSON, REMOVAL OF SUCH, (in a statute). 46 Vt. 60, 63.

PERSON WHATEVER, FOR ANY, (in a statute). 49 Ga. 436, 439.

PERSONA.—

§ 1. A person; anybody capable of having and becoming subject to rights. See Sand. Just. (5 edit.) 13.

§ 2. The rector of a church instituted and inducted, for his own life, was called *persona*

mortals; and any collegiate or conventual body, to whom the church was forever appropriated, was termed *persona immortalis*.—*Jacob*.

Persona conjuncta æquiparatur interesse proprio (Bacon): The interest of a man's kindred is equivalent to his own.

PERSONA DESIGNATA.—A person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. Thus, if a testator bequeaths property to his children as a class, only those who fill that character at his death, *i. e.* the survivors, can participate in the gift, while if he bequeaths it to them as *personæ designatæ*, the children of such of them as have died in his life-time will take their parents' shares. (*In re Stansfield*, 15 Ch. D. 84. See LAPSE, § 1.) So property may be given to an illegitimate child as *persona designata*, but not as a child simply. See CHILD, § 2.

PERSONA ECCLESIAE.—The parson or personation of the church.

Persona regis mergitur persona ducis (Jenk. Cent. 160): The person of duke merges in that of king.

PERSONABLE.—The being able to hold or maintain a plea in court; also, capacity to take anything granted or given.—*Plowd.*

PERSONAL.—

§ 1. That which has reference to the person of an individual, as in the case of a personal contract. (*British Waggon Co. v. Lea*, 5 Q. B. D. 149. See CONTRACTS, § 11.) A personal injury is an injury to the person of an individual, such as an assault, as opposed to an injury to his property, such as a trespass. See ACTIO PERSONALIS MORITUR CUM PERSONA.

§ 2. **Actions—Property.**—In the division of actions, a personal action originally meant one which was brought to enforce a remedy against a specific person, while in a real action the remedy was against a thing. Thus, an action on a contract or tort was a personal action, while an action to recover land was a real action, because the land itself could always be recovered. (See ACTION, § 15; IN PERSONAM.) Hence also arose the distinction between real and personal property, as to which see the respective titles. Wms. Real Prop. 6.

PERSONAL, (in a will). 128 Mass. 433, 434.

PERSONAL ACTION.—See PERSONAL, § 2.

PERSONAL ACTION, (defined). 71 Me. 237.
 — (when survives). 13 Serg. & R. (Pa.) 184, 185.
 — (when does not survive). 13 Serg. & R. (Pa.) 416.

PERSONAL ASSETS.—Chattels, money and other personal property belonging to a bankrupt, insolvent or decedent estate, and chargeable with the debts of the estate.

PERSONAL BAGGAGE, (what is not). 106 Mass. 146; 8 Am. Rep. 300.

PERSONAL CHATTELS.—Goods, money, or movables.

PERSONAL CHATTELS, (in bills of sale act). 2 C. P. D. 212.

PERSONAL CONTRACT.—See PERSONAL, § 1.

PERSONAL ESTATE.—Personal property (*q. v.*)

PERSONAL ESTATE, (what is). 1 Myl. & K. 649.

— (includes "slaves"). 1 Dana (Ky.) 102.

— (in a statute). 7 Hill (N. Y.) 261; 4 Paige (N. Y.) 384; 31 N. Y. 32; 1 Russ. & G. (Nov. Sc.) 46, 48.

— (in a will). 1 Ves. 522; 4 Id. 76; 1 Ves. & B. 415; 8 Com. Dig. 474.

PERSONAL ESTATE, PROPERTY, CHATTELS AND EFFECTS, (in a will). 3 C. P. D. 344.

PERSONAL ESTATE WITHIN THIS STATE, (in tax act). 88 N. Y. 576.

PERSONAL ESTATES, (in a will). 11 East 246.

PERSONAL GOODS, (does not include "bank notes," "money" and "coin"). 1 Cranch (U. S.) 141; 5 Mas. (U. S.) 537, 540.

— (does not include "choses in action"). 5 Mas. (U. S.) 356.

PERSONAL IDENTITY.—See IDENTIFICATION.

PERSONAL INJURY.—See PERSONAL, § 1.

PERSONAL INJURY, (defined). 71 Me. 229.
PERSONAL INJURY, GREAT, (equivalent to "great bodily injury"). 23 Miss. 687.

PERSONAL LAW.—As opposed to territorial law, is the law applicable to persons not subject to the law of the territory in which they reside. It is only by permission of the territorial law, that personal law can exist at the

present day; *e. g.* it applies to British subjects resident in the Levant and in other Mahomedan and barbarous countries. Under the Roman Empire, it had a very wide application.—*Brown*.

PERSONAL LIABILITY, (of members of a corporation). 17 Mass. 334.

—— (of members of an unincorporated association). 4 Serg. & R. (Pa.) 356.

—— (of stockholders of a bank). 15 Mass. 505; 16 *Id.* 9.

PERSONAL LIBERTY.—The right or power of locomotion; of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. 1 Bl. Com. 134.

PERSONAL LUGGAGE, (in a statute). 2 Am. L. Reg. 421.

PERSONAL OCCUPATION OF LANDS, (in a statute). 7 Mass. 1.

PERSONAL PROPERTY, or PERSONALTY.—

§ 1. This may be said generally to include (1) everything the subject of ownership not being land, or an interest in land; and also (2) a few exceptional interests in land which from historical reasons are nevertheless personalty.

§ 2. Personal property differs from realty chiefly in the following respects: (1) Realty is in theory only capable of being held for an estate (*q. v.*), while personalty is essentially the subject of absolute ownership. A chattel is accordingly incapable of being entailed. But limited and reversionary interests in chattels, analogous to certain estates in land, may be created under the doctrines of equity. Thus, a personal property may be vested in trustees in trust for A. for life, and after his death for B.; but the rules governing contingent remainders in land do not apply to personal property. Chattels may also be made the subject of joint ownership and ownership in common, (*see* JOINT; JOINT TENANCY; TENANCY IN COMMON,) and of appointment under a power, (*see* POWER; Wms. Pers. Prop. 306 *et seq.*) (2) On the death of its owner, personalty (with few exceptions) passes to the executor or administrator of the deceased; and if he died intestate, it is divisible among his next of kin according to the Statutes of Distribution, while realty passes to the

devisee of its owner if he has disposed of it by will, or descends to his heir if he has died intestate, subject in either case to his debts. (*Id.* 381, 415.) (*See* ANIMALS, § 3; DESCENT; DONATIO CAUSA MORTIS; FIXTURES; GOODS; GROWING CROPS; HEIR; HEIRLOOM; NEXT OF KIN; TITLE DEEDS.) As to the administration of the real and personal property of a deceased person, *see* ADMINISTRATION, § 2; EXECUTOR. (3) Personal property is capable of being transferred or conveyed by modes inapplicable to real property. *See* ASSIGNMENT, § 2 *et seq.*

Personal property is subject to several divisions.

§ 3. As to the distinction between chattels real and chattels personal, *see* CHATTEL. Chattels personal are further divisible into choses in possession and choses in action. *See* CHOSE.

§ 4. **Mixed or impure**.—Mixed or impure personalty consists of leaseholds, terms of years, estates at will, land directed to be converted into money (*see* CONVERSION), and money secured on land, *e. g.* by mortgage. The term "impure personalty" is generally used, in England, with reference to the Mortmain Act, to denote property which, though personalty, is not allowed to be given to charitable uses by will, &c. *See* CHARITABLE TRUSTS ACT; DEBENTURE, p. 350, *last note*; MORTMAIN, § 2.

§ 5. **Pure**.—Pure personalty comprises all personal property not connected with land in such a manner as to fall within the Mortmain Act.

§ 6. **Corporeal—Incorporeal**.—Personal property is also divisible into (1) corporeal personal property, which includes movable and tangible things, such as animals, ships, furniture, merchandise, &c.; and (2) incorporeal personal property, which consists of such rights as personal annuities, stocks, shares, patents and copyrights.

PERSONAL PROPERTY, (defined). 37 Ill. 197.

—— (distinguished from "real property").

1 Chit. Gen. Pr. 145.

—— (includes "bank notes"). 1 Ohio St. 422.

—— (includes "money"). 36 Ohio St. 548.

—— (does not include an interest under a contract). 2 Sumn. (U. S.) 278.

—— (a dog in, and is the subject of larceny). 2 Baxt. (Tenn.) 53, 56; 13 N. Y. Week. Dig. 74.

PERSONAL PROPERTY, (in a conveyance). 28 Vt. 26.

— (in city ordinance). 1 McCord. (S. C.) 349.

— (in a statute). 54 Cal. 178; 3 Vr. (N. J.) 355; 1 N. Y. 20, 24, 31; 3 Mon. T. 173.

— (in a will). 24 Pa. St. 20; 51 Wis. 60; L. R. 2 Ch. 138.

PERSONAL REPLEVIN.—*See* DE HOMINE REPLEGIANDO.

PERSONAL REPRESENTATIVE, (who is not). 16 Minn. 45.

— (an agent is not, within § 32, ch. 63, public statutes 1858). 15 Minn. 512.

— (in articles of marriage settlement). 11 Jur. 859.

— (in a will). 1 Russ. & M. 587.

PERSONAL REPRESENTATIVES.—Executors or administrators. 2 Steph. Com. (7 edit.) 198.

PERSONAL REPRESENTATIVES, (the next of kin are not). Sax. (N. J.) 437.

— (in articles of marriage settlement). 10 Beav. 362; 16 L. J. Ch. n. s. 503; L. R. 18 Eq. 686.

— (equivalent to "executor" or "administrator"). 3 Dill. (U. S.) 124; 8 Minn. 103; 15 Id. 512; 16 Id. 45; 2 Col. 723; 10 Jur. 748; Tam. 383.

— (in a statute). 34 Barb. (N. Y.) 319.

— (in a will). 1 Anstr. 123; L. R. 6 Eq. 589; 13 Sim. 52; 8 Com. Dig. 475.

PERSONAL RIGHTS.—The right of personal security, comprising those of life, limb, body, health, reputation, and the right of personal liberty.—*Wharton*.

PERSONAL SERVICES, (in a statute). 35 Me. 126.

PERSONAL STATUTES.—Statutes confined to particular persons, *e. g.* authorizing a person to change his name, &c. Also, statutes affecting the person principally, and treating of property only incidentally.

PERSONAL TITHES.—Those that are paid out of such profits as come by the labor of a man's person, as by buying and selling, gains of merchandise, handicrafts, &c.

PERSONAL TRANSACTION, (in a statute). 11 Hun (N. Y.) 214; 81 N. Y. 626.

PERSONALIS ACTIO.—*See* ACTIO PERSONALIS.

PERSONALITER.—In old English law, personally; in person.

PERSONALITY.—Said of an action when it is brought against the right person.—*O. N. B.* 92.

PERSONALITY OF LAWS.—All laws concerning the condition, state, and capacity of persons, as distinguished from the reality of laws, which means all laws concerning property or things. Whenever foreign jurists wish to express that the operation of a law is universal, they compendiously announce that it is a personal statute; and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be a real statute. Livermore uses the words *personality* and *reality*. Henry, the words *personality* and *reality*. Story preferred the former, as least likely to lead to mistakes, as *personality* in our law is confined to personal estate, and *reality* to real estate. (Story Conf. L. 23.)—*Wharton*.

PERSONALLY NOTIFIED, (in pleading). 1 Hill (N. Y.) 597.

PERSONALLY SERVED, (in act of March, 1877). 71 Ind. 585.

PERSONALTY.—Personal property (*q. v.*)

PERSONATING A SEAMAN, (indictment for). Russ. & R. C. C. 351, 353.

PERSONATION.—The act of representing oneself to be some one else, whether living or dead, real or fictitious. At common law personation for the purpose of fraud is a misdemeanor. (2 Russ. Cr. 886.) By various statutes personation for the purpose of obtaining property, dividends, wages, &c., or of giving votes at elections, is made felony.

PERSONS, (equivalent to "men"). 56 Me. 222.

— (not synonymous with "party"). 3 Hen. & M. (Va.) 255, 256.

— (often applicable to one). 14 Serg. & R. (Pa.) 289.

— (in a statute). Breese (Ill.) 395; 1 Bush (Ky.) 250; 18 Abb. (N. Y.) Pr. 118; 4 Cow. (N. Y.) 556; 20 Johns. (N. Y.) 726; 28 How. (N. Y.) Pr. 41; 23 N. Y. 242; 2 Utah T. 417.

PERSONS BEYOND SEAS, (includes persons out of the State). 3 Mich. 144.

PERSONS INJURED, (in a statute). 26 Vt. 737.

PERSONS OF COLOR, (who are). 3 Ired. (N. C.) 455.

— (entitled to same rights and privileges while traveling as white persons). 37 Iowa 145.

Perspiciua vera non sunt probanda (Co. Litt. 16): Plain truths need not be proved.

PERSUADE, (in a pleading). 12 Abb. (N. Y.) Pr. n. s. 187, 190.

— (in a criminal statute). 7 Q. B. D. 258.

PERSUADING, (in act defining treason, implies success). 1 Dall. (U. S.) 89.

PERTICATA TERRÆ.—The fourth part of an acre.—*Cowell.*

PERTICULAS.—A pittance; a small portion of alms or victuals. Also, certain poor scholars of the Isle of Man.—*Cowell.*

PERTINENT.—Material; relevant. Proof which legitimately tends to establish the cause of action or defense is called "pertinent;" evidence which has not that tendency is called "impertinent."

PERTINENTS.—In the Scotch law, apartments.

PERTURBATION.—In ecclesiastical law, disturbance of pews in a church. 1 Philim. Ecc. L. 323.

PERTURBATRIX.—A woman who breaks the peace.

PERVERSE VERDICT.—A verdict whereby the jury refuse to follow the direction of the judge on a point of law.

PERVISE.—The palace-yard at Westminster.—*Sommer.*

PESA.—A weight of two hundred and fifty-six pounds.—*Cowell.*

PESAGE.—A custom or duty paid for weighing merchandise or other goods.—*Cowell.*

PESSIMI EXEMPLI.—Of the worst example.

PESSONA.—Mast of oaks, &c., or money taken for mast, or feeding hogs.—*Cowell.*

PESSURABLE, PESTARBLE. or **PESTARABLE WARES.**—Merchandise which takes up a good deal of room in a ship.—*Cowell.*

PETER-PENCE.—An ancient levy or tax of a penny on each house throughout England paid to the pope. It was called *Peter-pence*, because collected on the day of St. Peter, *ad vincula*; by the Saxons it was called *Rome-feoh*, *Rome-scot*, and *Rome-pennyng*, because collected and sent to Rome; and lastly, it was called *hearth-money*, because every dwelling-house was liable to it, and every religious house, the abbey of St. Albans alone excepted.

It was not intended as a tribute to the pope, but chiefly for the support of the English school or college at Rome; the popes, however, shared it with the college, and at length found means to appropriate it to themselves.

At first it was only an occasional contribution, but it became at last a standing tax; being established by three laws of King Canute, Edward the Confessor, and the Conqueror. Edward III. first forbade the payment, but it soon after returned, and continued to the time of Henry VIII., when Polydore Vergil resided in England

as the pope's receiver-general. It was abolished under that prince, and restored again under Philip and Mary, but was finally prohibited under Queen Elizabeth.—*Chamb. Cyc.*

PETIT.—Small; little; petty.

PETIT CAPE.—See **CAPE.**

PETIT JURY.—See **JURY**, § 7.

PETIT LARCENY.—See **LARCENY**, § 2.

PETIT SERJEANTY.—See **PETTY SERJEANTY.**

PETIT TREASON.—Treason of a lesser kind. As if a servant killed his master, a wife her husband, a secular or religious man his prelate. But by the 9 Geo. IV. c. 31, § 2, every offense which, before the passing of the act, would have amounted to petit treason, shall be deemed murder only. See 24 and 25 Vict. c. 100, § 8; 4 Steph. Com. (7 edit.) 77, 150 n.

PETITE ASSIZE.—The small assize as distinguished from the "grand assize" (*q. v.*) It decided only as to the question of possession, not as to that of property.

PETITIO.—A count or declaration.—*Glanv.*

PETITIO PRINCIPIL.—Begging the question, which is the taking of a thing for true or for granted, and drawing conclusions from it as such, when it is really dubious, perhaps false, or at least wants to be proved, before any inferences ought to be drawn from it. For a discussion on the question, "Is the syllogism a *petitio principii*?" see 1 Mill Log. b. 2, c. iii., § 1, p. 206.

PETITION.—

§ 1. A written statement addressed to a court, public officer, or other superior authority, setting forth facts on which the petitioner bases a prayer for remedy or relief. With the exception of petitions of right (*q. v.*), petitions are generally merely a peculiar mode of applying to a court, and do not necessarily indicate that the right sought to be maintained is different in its nature from ordinary rights. (See Dan. Ch. Pr. 1434. See, also, **ACTION**; **MOTION**; **SUMMONS**.) The person by whom a petition is presented is called the "petitioner," and the persons on whom it is served, in order that they may appear at the hearing and oppose or consent to the granting of the prayer, are called the "respondents."

§ 2. Petitions in the English High Court of Justice are practically confined to the Chancery and Probate, Divorce and Admiralty Divisions,

although they were not unknown in the old common law courts. (*See* Tidd Pr. index *v.* Petition.) At the present day almost the only kind of petition used in the Queen's Bench Division seems to be that for admission to sue *in forma pauperis* (*q. v.*) Arch. Pr. 1070.

Petitions in the Chancery Division are of two kinds, those presented in a pending action or suit, and summary or statutory petitions.

§ 3. **Chancery—In a cause.**—Petitions presented in pending actions are of various kinds according to the nature of the application; thus, if an administration action has been heard and the further consideration has not been reserved, the only way by which, while the action is still pending, a party can afterwards apply to the court to do anything not directed by the order or judgment, is by presenting a petition. As to petitions of course, *see* OF COURSE.

§ 4. **Summary, and statutory petitions.**—Sometimes a petition may be presented without the institution of an action. *e. g.* for the maintenance of an infant. (*See* MAINTENANCE.) Usually these petitions are of statutory origin, having been introduced to save the expense of a regular action in simple cases. The examples of most usual occurrence, in England, are petitions under the Trustee Acts, the Trustee Relief Acts, the Settled Estate Acts, the Lands Clauses Consolidation Acts, and winding-up petitions under the Companies Acts. (*See* those titles.) As to petitions by trustees, executors, &c., for the opinion or direction of the court, *see* EXECUTOR, § 10.

§ 5. **Divorce.**—In the Probate, Divorce and Admiralty Division every matrimonial suit is commenced by a petition praying the relief sought, *e. g.* a decree of nullity or dissolution of marriage, &c. (Brown Div. 195.) In addition to these original petitions, subsidiary or incidental petitions of various kinds are sometimes required to be presented in a suit, *e. g.* to claim the custody of children, for alimony, &c. *Id.* 1, 157, 202.

§ 6. **Admiralty.**—Formerly the pleadings in Admiralty actions commenced with a petition by the plaintiff in the nature of a declaration at common law. Wms. & B. Adm. Pr. 246. *See, now,* STATEMENT OF CLAIM; LIBEL, § 5; PROTEST.

§ 7. **Bankruptcy.**—In bankruptcy, a petition is the mode by which proceedings to administer an insolvent's estate are commenced. It may be a petition for adjudication presented by a creditor, or a petition for composition or liquidation, presented by the insolvent. *See* ADJUDICATION; BANKRUPTCY, § 4; COMPOSITION, §§ 3, 4; DECLARATION, § 4; LIQUIDATION, § 1.

§ 8. **Petition of appeal.**—In the House of Lords and Privy Council, every appeal is commenced by a petition of appeal praying that the judgment appealed from may be reversed or varied. Interlocutory petitions are also sometimes required, *e. g.* to extend the time for lodging the printed cases. Macph. Pr. C. Pr. 81, 87. *See* APPEAL, p. 65 *n.*

§ 9. **Lunacy.**—Proceedings in lunacy are generally instituted by a petition for

an inquiry, and after inquisition every matter requiring to be brought before the court forms the subject of a petition. *See* Elm. Pr. Lun. and Pope Lun. *passim.* *See, also,* LUNACY.

PETITION OF RIGHT.—

§ 1. The mode by which a subject can claim relief from the crown for certain kinds of injury arising from the acts of the crown or its servants, *e. g.* an illegal seizure of goods, wrongful possession of land, or a money claim consisting of a debt or damages for breach of contract. (Thomas *v.* The Queen, L. R. 10 Q. B. 31.) The petition itself is a document in which the petitioner set out his right, legal or equitable, to that which is demanded by him, and prays the queen to do him right and justice, and, upon a due and lawful trial of his right and title, to make him restitution. (Dan. Ch. Pr. 121.) The petitioner is called the "suppliant," and the persons against whom relief is prayed (for any person in enjoyment of the property or right claimed is made a party) are called the "respondents." The petition may be presented in any of the divisions of the High Court, on the home secretary granting his fiat for that purpose. The act regulating the proceeding by petition of right (23 and 24 Vict. c. 34) provides that, if the petition is presented in Chancery, the subsequent proceedings up to judgment are to follow those in a suit in equity; and if in one of the common law courts, they follow those in an action at law. As petitions of right are not affected by the Judicature Act, the rules of the former common law and equity practice are still applicable to them. *Rustomjee v. The Queen*, 1 Q. B. D. 487; 2 *Id.* 69. *See* AMOVEAS MANUS, § 2; MONSTRANS DE DROIT; TRAVERSE.

§ 2. By the constitution of the United States, the right "to petition the government for a redress of grievances" is secured to the people. Amend. Art. I.

PETITION OF RIGHTS.—A parliamentary declaration of the liberties of the people assented to by King Charles I., in 1629. It is to be distinguished from the Bill of Rights, 1689, which was passed into a permanent constitutional statute. *See* BILL OF RIGHTS.

PETITIONING CREDITOR.—The creditor at whose instance an adjudication of bankruptcy is made against a bankrupt.

PETITORY SUITS.—In admiralty and civil law practice, suits which involve and litigate only the title to property are called "petitory," in distinction from those which seek to recover the possession, and are called "possessory."—*Abbott.* (*See* POSSESSORY.) In the Scotch law, actions for damages are so called.

PETRA.—A stone weight.—*Cowell.*

PETROLEUM, (in a statute). L. R. 6 Q. B. 505.

PETTIFOGGER.—A lawyer in a mean way of business; a pretender to law, without knowledge or honesty.

PETTIFOGGING SHYSTER, (defined). 40 Mich. 251.

PETTY.—See **PETIT.**

PETTY AVERAGE.—See **AVERAGE**, § 2.

PETTY BAG OFFICE.—The Petty Bag Office was so called because in it the proceedings in which the crown was concerned were preserved in a little sack or bag, *in parva бага*, instead of being enrolled on rolls as in the case of other proceedings. 3 Bl. Com. 49; 4 Inst. 80. See **CHANCERY**, § 4; **HANAPER**.

§ 1. The principal office on what was formerly the common law side of the Court of Chancery, and is under the management of an officer called the "clerk of the petty bag." It is now an office of the High Court of Justice. Out of it issue all original writs, certain kinds of writs of error and *certiorari*, commissions of charitable uses, idiocy, and lunacy, commissions to seize escheated and forfeited lands, &c., writs of *dedimus potestatem*, *congé d'élire*, *scire facias* to repeal letters-patent and enforce recognizances, &c., and writs on the calling of a new parliament. In it are filed traverses of inquisitions and returns to various commissions, including commissions for production of a *cestui que vie*. (See the various titles.) In it is also transacted the business connected with the admission of solicitors. (See Rep. Com. on Fees 8; Second Rep. Leg. Depart. Com. 124; 4 Inst. 80; 3 Bl. Com. 49; 2 Dan. Ch. Pr. 1910; *Castro v. Murray*, L. R. 10 Ex. 213; Arch. Pr. 63. See, also, Solicitors Act, 1877, § 9.) The practice of the office is regulated by the Petty Bag Office and Enrollment in Chancery Amendment Act, 1849, and the general orders. 12 and 13 Vict. c. 109; 2 Dan. Ch. Pr. 1606; *Dale's Case*, 6 Q. B. D. 376.

§ 2. By the Judicature (Officers) Act, 1879, § 14, the office of clerk of the petty bag will be abolished on the occurrence of the next vacancy.

PETTY CONSTABLES.—Inferior officers in every town and parish, subordinate to the high constable of the hundred. See **CONSTABLES**, § 2.

PETTY JURY.—See **JURY**, § 7.

PETTY LARCENY.—See **LARCENY**, § 2.

PETTY SERJEANTY.—"Tenure by petite serjeanty is where a man holds his land of our sovereign lord the king, to yield to him yearly a bow, or a sword, or a dagger, or a knife, or a lance, or a paire of gloves of maille, or a pair of gilt spurs, or an arrow, or divers arrowes, or to yield such other small things belonging to

warre." (Litt. § 159.) "And such service is but socage in effect." (*Id.* § 160.) The act 12 Car. II. c. 24, took away from this tenure the incidents of livery and primer seisin, but does not seem to have affected it in other respects. Co. Litt. 108 b, 2 (1). See **GRAND SERJEANTY**; **SOCAGE**; **TENURE**.

PETTY SESSIONS.—An occasional meeting, in England, of two or more justices of the peace, arranged between themselves, for the transaction of business for which the presence of more than one justice is either necessary or desirable. Petty sessions are commonly held weekly. (Stone Just. 51.) In cities, boroughs, and towns corporate having a separate commission of the peace, every sitting of justices of the peace or of a stipendiary magistrate, is deemed a petty sessions of the peace. Stat. 12 and 13 Vict. c. 18, § 1; Pritch. Quar. Sess. 2. See **SPECIAL SESSIONS**.

PEW.—

§ 1. An exclusive title to pews and seats in the body of an ordinary parish church may be maintained, in England, in virtue of a faculty, or by prescription. All other pews and seats in the body of the church are the property of the parish; and the church wardens, as the officers of the ordinary, and subject to his control, have authority to place the parishioners therein.

§ 2. A pew annexed by prescription to an ancient messuage cannot be severed from it. (Shelf. R. P. Stat. 115.) As to the chief pew in the chancel, see **CHANCEL**.

§ 3. **Church Building Acts.**—In the case of churches erected under the Church Building Acts, the distribution of the pews and seats is vested in the ecclesiastical commissioners and the bishop of the diocese, and they have power to fix rents for pews, subject to the provisions of the acts. Phillim. Ecc. L. 2160.

Pew, (is real property). 10 Mass. 323; 16 Wend. (N. Y.) 28.

— (right to sit in, is an incorporeal interest in real property). 1 Chit. Gen. Pr. 208.

— (title to a seat in, by prescription). 2 Bulst. 151; 5 T. R. 298.

Pew-HOLDER, (rights of). 17 Mass. 435; 1 Pick. (Mass.) 169; 3 Paige (N. Y.) 296.

PHAROS.—A watch-tower, or sea-mark, which cannot be erected without lawful warrant and authority. 3 Inst. 204.

PHYLASIST.—A jailer.

PHYSICAL DISABILITY, (in a statute). 10 Abb. (N. Y.) N. Cas. 165; 62 How. (N. Y.) Pr. 390.

PHYSICAL FACT.—In the law of evidence, a fact, the existence of which is perceptible by the senses; such as the sound of a pistol shot; a man running; impressions of human feet on the ground. (Burrill Circ. Ev. 180.) "A fact considered

to have its seat in some inanimate being, or, if in an animate being, by virtue, not of the qualities by which it is constituted animate, but of those which it has in common with the class of inanimate beings." 1 Benth. Jud. Ev. 45.

PHYSICIAN.—One who professes the art of healing.

The English rule that nothing disclosed to a physician in the course of his profession is privileged from inquiry in a court of justice, does not prevail in most of the States, the opposite doctrine, viz., that a physician cannot be permitted, even if he so desires, to disclose statements made to him by his patient, being considered more consonant to the public welfare.

At common law, a physician could not maintain an action for his fees. (4 T. R. 317; 3 Q. B. 928.) In England, before the passing of the 21 and 22 Vict. c. 90, a physician, or medical practitioner who affected to be a physician, had no remedy at law to recover his fees (the presumption being that he acted only with a view to an honorary reward). And a physician who prepared or dispensed his own medicines could not recover for them, although they were furnished to his own patients. But by that act, a physician who is registered under the act may do so if not precluded by any by-law of the College of Physicians. That college has passed a by-law prohibiting *fellows* of the college from suing, but that does not apply to *members*. (Gibbon v. Budd, 2 H. & C. 92.) No such rule ever obtained in the United States.

PIACLE.—An obsolete term for an enormous crime.

PICAROON.—A robber; a plunderer.

PICK OF LAND.—A narrow slip of land running into a corner.

PICKAGE.—Money paid at fairs for breaking ground for booths.

PICKERY.—Petty theft, or stealing things of small value.—*Bell Dict.*

PICKETING by members of a trade union on strike consists in posting members at all the approaches to the works struck against, for the purpose of observing and reporting the workmen going to or coming from the works, and of using such influence as may be in their power to prevent the workmen from accepting work there.

(Dav. Friend Soc. 212.) It having been found that picketing led to molestation, threats and even violence, the English Conspiracy and Protection of Property Act, 1875, (Stat. 38 and 39 Vict. c. 86, repealing 34 and 35 Vict. c. 32, containing similar provisions,) makes picketing an offense punishable by fine or imprisonment. See MOLESTATION; TRADE UNIONS.

PICKLE, PYCLE, or PIGHTEL.—A small parcel of land enclosed with a hedge, which, in some countries, is called a "plinge."—*Encycl. Lond.*

PICK-LOCK.—An instrument by which locks are opened without a key.

PICKPOCKET.—A thief who steals from the pocket or person of another without putting him in fear.

PICTURES, EXCEPT HIS, (in a will). 2 Vern. 538.

PIEDPOUDRE.—See COURT OF PIEDPOUDRE.

PIER, (defined). 5 Robt. (N. Y.) 285.

PIERAGE.—The duty for maintaining piers and harbors.

PIERS.—Wharves. See DOCK; HARBOR; PORT.

PIETANTIA.—A pittance; a portion of virtuals distributed to the members of a college.—*Encycl. Lond.*

PIETANTIARIUS.—The officer in a college who distributed the *pietantia*.—*Cowell.*

PIGEON-DROFFER, (in crimes act). 59 Ind. 173.

PIGHTEL.—A little enclosure.—*Cowell.*

PIGNORATION.—The act of pledging.

PIGNORATIVE — PIGNORARY.—Pledging; pawning.

PIGNORIS CAPIO.—Literally, the taking of a pledge; this was one of the old *Legis Actiones* in Roman law, and was available as a summary remedy in certain cases by military custom, and in a certain few other cases by statute. It operated like distraining.

PIGNUS.—A pledge or security for a debt or demand. This word is derived, says Gaius (D. 50, 16, 238), from *pignus*, "*quia quæ pignori dantur, manu traduntur.*" This is one of several instances of the failure of the Roman jurists when they attempted an etymological explanation of words. The element of *pignus* (*pig*) is contained in the word *pi(n)go* and its cognate forms. A pledge was called *pignus* when the possession of the thing was transferred to the pledgee, and *hypotheca*, when the pledgeor retained it in his

possession. (See Sand. Inst. (5 edit.) 132, 152, 325; 2 Steph. Com. (7 edit.) 21 n.)—*Wharton*.

PIGS, (are cattle within 9 Geo. I. c. 22). Russ. & R. C. C. 76.

PILA.—That side of money which was called *pile*, because it was the side on which there was an impression of a church built on piles. Fleta l. 1, c. xxxix.

PILETTUS.—In ancient forest laws, an arrow which had a round knob a little above the head, to hinder it from going far into the mark.—*Cowell*.

PILFER, (defined). 4 Blackf. (Ind.) 499.

PILEUS SUPPORTATIONIS.—The cap of maintenance.—*Cowell*.

PILFERER.—One who steals petty things.

PILLAGE.—The violent acquisition of booty in time of war. See **CAPTURE**, § 3.

PILLERY.—An obsolete term for rapine; robbery.

PILLORY.—A frame erected on a pillar, and made with holes and movable boards, through which the heads and hands of criminals were put.

The punishment of the pillory, which had been abolished in all other cases, by 56 Geo. III. c. 138, was retained for the punishment of perjury and subornation; but it is now altogether abolished in England by 7 Will. IV. and 1 Vict. c. 23. It was also long since abolished in most, if not all, of the States.

PILOTAGE—PILOTS.—

§ 1. **Qualified, or licensed**.—A pilot is a person who, in consequence of his special knowledge of a particular water, is taken on board a vessel to superintend the steering where the navigation is difficult and dangerous. A "qualified pilot" is a person duly licensed by a "pilotage authority," i. e. a body or person authorized to exercise jurisdiction in respect of pilotage.

§ 2. **Compulsory pilotage** is where every ship navigating within a certain district (and not coming within the exemptions in favor of small ships, regular coasting vessels, &c.), is bound to employ a qualified pilot if he offers his services. In such a case the owner of the ship is not responsible for the negligence of the pilot. The Calabar, L. R. 2 P. C. 238. See The Siquasi, 5 P. D. 241; Spaight v. Todcastle, 6 App. Cas. 217.

§ 3. A pilotage certificate may be granted

to the master or mate of a ship, authorizing him to pilot his ship (or any other ship belonging to the same owner) within certain limits. Maud. & P. Mer. Sh. 194 et seq.; 3 Steph. Com. 156.

PIMP-TENURE.—A very singular and odious kind of tenure mentioned by our old writers, "*Wilhelmus Hoppeshort tenet dimidium virgatum terre, per servitium custodiendi sex damisellas, scil. meretrices, ad usum domini regis.*" 12 Edw. I.

PIN MONEY.—A yearly allowance settled upon a married woman, before the marriage, for the purchase of dress or ornaments, or otherwise for her separate and private expenditure. Snell Eq. 295, citing Howard v. Digby, 8 Bligh N. R. 265; Elph. Conv. 330; Macq. Husb. & W. 355.

PINNAGE.—Poundage of cattle.

PINNER.—A pounder of cattle; a pound-keeper.

PINT.—A liquid measure of half a quart, or the eighth part of a gallon.

PROUS PURPOSES, (bequest for). 5 Wheel. Am. C. L. 308.

PIPE.—(1) A roll in the Exchequer; otherwise called the "great roll." The pipe-office was abolished by 3 and 4 Will. IV. c. 99. (2) A liquid measure containing two hogshheads.

PIRACY.—

§ 1. **Copyright**.—In private or civil law, piracy is the infringement of copyright; in other words, where a person reproduces the whole or part of a work which is the subject of copyright, so as to interfere with the profit of the owner, he commits a piracy, unless the new work is a *bonâ fide* abridgment of the other. (Shortt Copyr. 168 et seq.) The importation of pirated copies from abroad is an infringement of copyright. The remedy for a threatened piracy or continued infringement, is by injunction; for a past infringement the remedy is damages, or in certain cases a penalty is imposed by statute. *Id.* 216.

In criminal law, piracy is of two kinds.

§ 2. **Law of nations**.—Piracy by the law of nations is the offense of taking a ship on the high seas or within the jurisdiction of the Admiralty, from the possession or control of those who are lawfully entitled to it, and carrying away the ship or any of its goods, tackle, &c., under circumstances which would have amounted

to robbery if the act had been done on land or within the body of a county. Steph. Cr. Dig. 64; Co. Litt. 391a; Man. Int. Law 120, 159; 1 Russ. Cr. 253.

§ 3. Piracy is punishable, in England, with penal servitude for life, unless it is accompanied by attempted murder, or violence dangerous to life, in which case the punishment is death. Stat. 1 Vict. c. 88.

§ 4. Statutory.—Several offenses have been made piracy, and punishable with penal servitude for life, by various statutes. Stats. 8 Geo. I. c. 24; 18 Geo. II. c. 30; 11 and 12 Will. III. c. 7; 1 Vict. c. 88. See SLAVE TRADING.

PIRACY, (defined). 2 Cliff. (U. S.) 394, 418; 4 Sawy. (U. S.) 501, 511; 2 Wheel. Cr. Cas. 218, 221; 1 Kent Com. 183; 33 L. J., M. C. 201.

— (what constitutes). 1 Gall. (U. S.) 247, 254; 3 Wheat. (U. S.) 610, 643; 5 *Id.* 153, 169; 2 Wheel. Cr. Cas. 543; 7 Wheel. Am. C. L. 326.

— (what is not). 2 Wheel. Cr. Cas. xxix.

Pirata est hostis humani generis (3 Inst. 113): A pirate is an enemy of the human race.

PIRATE, (defined). 2 Paine (U. S.) 333.

PIRATED PRINTS, (what are not). 1 Barn. & Ad. 804.

PIRATICAL, (in act to protect commerce). 2 How. (U. S.) 210.

PIRATICALLY.—A technical word which must always be used in an indictment for piracy. 3 Inst. 112; 1 Chit. Crim. L. *244.

PIRATICALLY AND FELONIOUSLY, (in a statute). 7 Wheel. Am. C. L. 328.

PISCARIA, (defined). 37 Me. 472.

PISCARY.—See FISHERY.

PISTAREEN, (a silver coin of Spain not made current by law in the United States). 10 Pet. (U. S.) 620.

PISTOL, (what is not). 46 Ala. 88.

PISTOL, CONCEALED, (indictment for carrying). 6 Blackf. (Ind.) 31.

PIT.—A hole wherein the Scots used to drown women thieves.—*Skene de Verb Signif.*

PIT AND GALLOWS.—See *FURCA ET FOSSA*.

PIT OF WATER, (ejectment lies for). 1 Chit. Gen. Pr. 189.

PITCHING-PENCE.—Money; commonly a penny, paid for pitching or setting down every bag of corn or pack of goods in a fair or market.—*Cowell*.

PITTANCE.—A slight repast or refecton of fish or flesh more than the common allowance; and the pittancer was the officer who distributed this at certain appointed festivals.—*Cowell*.

PIXING THE COIN.—Ascertaining whether coin is of the proper standard. The trial of the pix takes place, in England, before a jury of members of the Goldsmiths' Company. It is now regulated by 33 and 34 Vict. c. 10, §§ 12-13.

PLACARD, or PLACART.—An edict; a declaration; a manifesto. Also an advertisement or public notification.

PLACE.—See VENUE.

PLACE, (a steamboat moored at a wharf is). 34 Me. 210.

— (in a statute). 55 Me. 456; 2 Vr. (N. J.) 390; 1 Cow. (N. Y.) 13; 42 Vt. 579, 582; 46 *Id.* 425, 432; 20 L. J., M. C. 181; L. R. 9 C. P. 339; L. R. 3 Ex. 137; L. R. 4 Q. B. 166; 10 *Id.* 102; Stark. Cr. Pl. 56, 67.

PLACE FOR THE RECEIPT OF LETTERS, (in a statute). 4 Car. & P. 572.

PLACE GOODS AT A CERTAIN PRICE, (in a letter). 112 Mass. 14.

PLACE HAVING A KNOWN AND DEFINED BOUNDARY, (in local government act). L. R. 8 Q. B. 227; 9 *Id.* 443.

PLACE HAVING DEFINED BOUNDARY, (in a statute). L. R. 1 Q. B. 110.

PLACE, IN ANY OTHER, (in a statute). 2 Wheel. Cr. Cas. xxxiii.

PLACE OF BUSINESS, (what is not). 1 Pet. (U. S.) 578.

— (in a statute). 9 Cush. (Mass.) 298, 301; 98 Mass. 95; 111 *Id.* 320; 8 Daly (N. Y.) 185; 38 Tex. 599.

PLACE OF DESTINATION, FOR SALE OR MANUFACTURE, (in a statute). 66 Me. 65.

PLACE OF ENTERTAINMENT OR AMUSEMENT, (in Sunday law). L. R. 10 Ex. 291.

PLACE OF PROFIT, (in a statute). 9 Barn. & C. 310; 4 Man. & Ry. 176.

PLACE OF PUBLICATION, (in a statute). 85 Ill. 110.

PLACE OR OFFICE, (the practice of law is not). 1 Munf. (Va.) 468.

PLACE OR OFFICE OF PROFIT IN THE GOVERNMENT, (what is not). Burr. 1004.

PLACE TO WHICH THE PUBLIC HAVE ACCESS, (in vagrant act). L. R. 6 Q. B. 130.

PLACE WHERE THE OWNER RESIDES, (construed). 4 Dill. (U. S.) 441.

PLACE-BILL.—The Stat. 6 Anne c. 7, excluding from the House of Commons any person holding an office created since the 25th of October, 1705, or receiving a pension during the pleasure of the crown; the act also obliged every member accepting a previously existing office to submit himself for re-election, unless the office were merely a higher commission in the army. Under the Reform Act, 1867, (30 and 31 Vict. c. 102, § 52,) mere removal of a minister from an office under the crown to another does not impose the necessity of re-election. The

Place Bill of 1741 excluded from the parliament a large number of officials and clerks in public departments. By the Stat. 22 Geo. III. c. 45, contractors under government are disqualified. (Taswell-Langmead, 643-45.)—*Brown*.

PLACED SEINE, (in a statute). 4 Pick. (Mass.) 165.

PLACEMAN.—One who exercises a public employment, or fills a public station.

PLACES, (in a statute). 5 Binn. (Pa.) 300.

PLACING A FENCE, (in a statute). South. (N. J.) 550.

PLACIT, or PLACITUM.—Decree; determination.

PLACITA.—The public assemblies of all degrees of men where the sovereign presided, who usually consulted upon the great affairs of the kingdom. Also, pleas, pleadings, or debates, and trials at law; sometimes penalties, fines, mulcts, or emendations. Also, the style of the court at the beginning of the record at *Nisi Prius*; but this is now omitted.—*Cowell*.

PLACITA COMMUNIA. — Common pleas. All civil actions between private persons.

PLACITA CORONÆ.—Pleas of the crown. Prosecutions for crimes wherein the king is plaintiff.

Placita de transgressione contra pacem regis, in regno Angliæ vi et armis facta, secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent (2 Inst. 311): Pleas of trespass against the peace of the king in the kingdom of England, made with force and arms, ought not, by the law and custom of England, to be pleaded without the king's writ.

PLACITARE.—To plead.

PLACITATOR.—A pleader.—*Cowell*.

PLACITORY.—Relating to pleas or pleading.

PLACITUM.—See PLACITA; also PLEADING.

PLACITUM, (defined). 1 Saund. 339, n. (8); Yelv. 65 n.

Placitum aliud personale, aliud reale, aliud mixtum (Co. Litt. 284): Pleas are personal, real, and mixed.

PLACITUM NOMINATUM.—The day appointed for a criminal to appear and plead and make his defense.—*Leg. H. 1, c. xxix.*; *Cowell*. *Placitum fractum*, when the day is past.

PLAGIARIST, or PLAGIARY.—One who publishes the thoughts and writings of another as his own.

PLAGIARIUS.—In the civil law, one who knowingly kept in irons, or confined, sold, gave, or bought a citizen (whether freeborn or a freedman), or the slave of another; the offense being called *plagium*.

PLAGIARY.—A man-stealer.

PLAGII CRIMEN, or PLAGIUM.—In the civil law, the stealing and retaining the children of freemen and slaves.

PLAGUE.—Pestilence; a contagious and malignant fever. By Stat. 1 Jac. I. c. 31, if any infected with the plague, or dwelling in an infected house, should be commanded by the mayor or constable, &c., to keep house, and should disobey such direction, he should be enforced with violence, by the watchmen, to obey; and if any hurt ensued by such enforcement, the watchmen were not to be impeached. And if such person went abroad and in company, if he had any infectious sore upon him uncured, he should suffer death as a felon; but if no such sore should be found upon him, he should be punished as a vagabond, and bound to good behavior. This act was abolished by 7 Will. IV. and 1 Vict. c. 91, § 4. See, now, 38 and 39 Vict. c. 55, §§ 134-140. See, also, PUBLIC HEALTH; QUARANTINE.

PLAIDEUR.—An obsolete term for an attorney who pleaded the cause of his client; an advocate.

PLAIN ENGLISH TYPE, PRINTED IN, (when a notice is not). 57 Mo. 235, 237.

PLAIN MISTAKE, (what is). 6 Munf. (Va.) 297.

PLAIN STATEMENT, (in pleading, defined). 79 N. C. 524; 5 Sandf. (N. Y.) 557, 564.

PLAINANT.—A plaintiff.

PLAINT.—

§ 1. Every action in an English county court is commenced by the registrar entering, in a book kept for the purpose, at the request of the intended plaintiff, a "plaint in writing," stating the names and the addresses of the parties, and the substance of the action; on this a summons is issued. (County Courts Act, 1846, § 59; Poll. C. C. Pr. 77. See SUMMONS.) The registrar gives the plaintiff a note called a "plaint note," containing the date of the entry, the day fixed for the trial, and some notices for the guidance of the plaintiff. See County Court Forms, 1875, number 7 et seq.; Poll. C. C. Pr. 593. See, also, PARTICULARS OF DEMAND.

§ 2. Customary complaints.—Before the abolition of real actions a copyholder could only plead and be impleaded in respect of his copyhold land in the court of the manor, by

what were called "customary plaints," which were analogous to the common law writs in real actions, and called after them, *e. g.* plaints in the nature of writs of entry, plaints in the nature of writs of right, &c. *Serv. Copyh.* 562.

PLAINTIFF.—A person who brings an action. (*See* PART, § 4.) When the action is against the crown he is called, in England, the *suppliant*; when the action is in the form of an information, he is called the *informant*. He is called *petitioner* in an ordinary petition, and *prosecutor* in a prosecution. In equity, he is styled the *orator*.

PLAINTIFF, (defined). 4 Biltb (Ky.) 251.
 ——— (in a statute). 49 Ala. 182; 55 Me. 453; 5 Hull (N. Y.) 523, 538, 547.

PLAINTIFF IN ERROR.—The party who sues out a writ of error to review a judgment; the prosecutor in a writ of error.

PLANS.—Upon the sale of lands a plan may be (and usually is) so incorporated into, as to control, the contract, (*Nene Valley Drainage v. Dunkley*, 4 Ch. D. 1.) Old maps, plans, tracings, &c., are frequently admissible in evidence against (but not, *semble*, for) persons claiming under former proprietors by whose direction or for whose use they were made; (*Bull. N. P.* 283a;) also maps, plans, &c., made or recognized by persons having adequate knowledge, and who were since deceased, may be admissible as evidence of reputation. (*Reg. v. Milton*, 1 Car. & K. 58.)—*Brown*.

PLANT.—The fixtures, tools, machinery, and apparatus which are necessary to carry on a trade of business.

PLANT, (defined). 7 Conn. 186, 201.
 ——— (does not include young fruit trees). 1 Moo. & M. 341.

PLANTATION.—(1) In English law, a colony. (2) In the Southern States, a farm.

PLANTATION, (defined). 38 Cal. 291, 295; 7 Conn. 186, 201; 10 Ired. (N. C.) L. 431; 3 McCord (S. C.) 363.

——— (device of). 8 Serg. & R. (Pa.) 289.
 ——— (in act to encourage silk culture). 38 Cal. 291.

——— (in a will). 2 Binn. (Pa.) 18, 31. 1 Sim. 435, 459.

PLANTATIONS, (in the navigation acts). 1 Dow 191, 197.

PLAT, or PLOT.—A map of a piece of land on which are marked the courses and distances of the different lines, and the quantity of land it contains.—*Bouvier*.

PLATE, (in a policy of insurance). 2 Hall (N. Y.) 490.
 ——— (in a will). 2 Atk. 103.

PLAY-DEBT.—Debt contracted by gaming. *See* GAMING.

PLAYING OR BETTING, (in vagrant act). L. R. 6 Q. B. 130, 514.

PLEA.—

§ 1. **To writ, &c.**—A plea is a mode of putting forward a defense to certain proceedings. Thus, if a writ of *scire facias*, prohibition or the like is issued against a person, and he wishes to put forward facts in answer to the writ, he does so by plea; or, if a return is made to such a writ, and the person at whose instance the writ was issued wishes to contest it, he puts in a plea (or demurrer) to the return. *Lee v. Bude, &c., Railway Co.*, L. R. 6 C. P. 576. *See* an instance of a plea to the return to a *mandamus*, *The Queen v. Postmaster-General*, 1 Q. B. D. 658. *See* TRAVERSE.

§ 2. **To indictment.**—In a criminal prosecution, the prisoner has to plead to the indictment, which he may do either (1) by pleading to the jurisdiction, *i. e.* alleging that the court has no jurisdiction to try him; or (2) by demurring (*see* DEMURRER, § 9); or (3) by pleading in abatement, *i. e.* showing some defect in the indictment in point of form; or (4) by pleading some plea in bar, namely, either a general plea "guilty," or "not guilty," or a special plea, such as "*autrefois acquit*," "*autrefois convict*," or "pardon." (*Broom Com.* L. 992, 993, *n.* (p); *Rosc. Cr. Ev.* 202; 4 *Steph. Com.* 397; *Arch. Cr. Pl.* 128. *See* the various titles.) As formal defects are now almost always capable of amendment, in the English practice, pleas in abatement are practically obsolete. *Arch. Cr. Pl.* 130.

§ 3. **Ecclesiastical practice.**—In the English ecclesiastical courts, all the pleadings are called "pleas." The first plea is either articles or a libel, and every subsequent plea is an allegation. *Phillim. Ecc. L.* 1254. *See* those titles.

§ 4. **Common law practice.**—Under the common law practice a plea is the

principal mode of putting forward a defense to a civil action or suit. In an action at common law, the plea is similar to the statement of defense under the present English practice, and to the answer under the practice of the Code States, in so far that it states facts as an answer to the declaration, as opposed to a demurrer (*q. v.*); but differs from a statement of defense or answer in stating the facts vaguely and in a peculiar form. Pleas are of two kinds, dilatory and peremptory. The first class includes pleas to the jurisdiction, *i. e.* pleas denying the jurisdiction of the court, and pleas in abatement; the second class consists of pleas in bar. *See* 11 Sm. Ac. 85 *et seq.*; 5 Steph. Pl. 50 *et seq.*; Fish. Dig. *Pleading*, v., vi.

§ 5. A plea in abatement does not give an answer to the plaintiff's case, but shows that he has committed some informality, *e. g.* that he has not joined the proper parties to the action.

§ 6. A plea in bar shows a substantial defense to the action, either by *traverse* or by *confession and avoidance* (*q. v.*)

§ 7. Pleas are distinguished as *general issues*, in which the defendant simply traverses the plaintiff's allegations, and *special pleas*, in which the defendant states the grounds of his defense; from the latter term arose the expression *special pleading*. 5 Steph. Pl. 189. *See* GENERAL ISSUE; PLEADER.

§ 8. A plea *puis darrein continuance* ("after the last continuance") is a plea setting up a ground of defense which has arisen after the defendant has pleaded in the ordinary course; thus, if after the defendant has delivered his plea, the plaintiff gives him a release, the defendant can set up the release by plea *puis darrein continuance*. 11 Sm. Ac. 108; Chit. Pr. 919. *See* CONTINUANCE.

§ 9. *Chancery practice*.—In equity, pleas are somewhat rare in practice, and are generally only used in cases where the defendant is in a position to state one or more facts, which if inserted in the bill would make it demurrable; in such a case the defendant, by filing a plea, (which generally has to be sworn to by him,) may avoid putting in an answer, and bring the suit to an end at once. Pleas are of

various kinds, of which pleas to the jurisdiction and pleas in bar are the principal. Hunt. Eq. 36; Mitf. Pl. 218; Dan. Ch. Pr. 520. As to pleas in probate causes, *see* Browne Prob. Pr. 285.

§ 10. *Pleas of the crown*.—*Plea side*.—In its original sense, "plea" meant any legal proceeding. "Pleas of the crown" were criminal proceedings, while civil actions were called "common pleas," or "pleas," simply. (Co. Litt. 287a.) The Court of Queen's Bench was formerly said to have a crown side and a plea side, the former being its jurisdiction in crown business, and the latter its jurisdiction in ordinary actions; so the jurisdiction of the Court of Exchequer in ordinary actions was called its "plea side," as opposed to its jurisdiction in revenue matters. 3 Steph. Com. 332, 340. *See* PLEADING.

PLEA, (equivalent to "defense"). 7 Conn. 431, 436.

PLEA, OR PLEADING, (not equivalent to "demurrer"). 2 Mo. App. 303.

PLEA IN ABATEMENT.—*See* ABATEMENT, §§ 5, 6; PLEA, § 5.

PLEA IN BAR.—*See* BAR, § 6; PLEA, § 6.

PLEA SIDE.—*See* PLEA, § 10.

PLEAD.—

§ 1. In its general sense, to plead, is to answer the previous pleading of the opposite party in an action or other proceeding by denying the facts therein stated, or by alleging some fresh facts; pleading is opposed to demurring; the former raises a question of fact, the latter a question of law. Thus, if a plaintiff delivers a statement of claim, declaration or complaint, which is not only demurrable, but also fails in stating the facts correctly, the defendant may apply for leave to plead and demur, and, if he obtains leave to do so, he delivers a statement of defense, plea or answer, and a demurrer.

§ 2. To plead also signifies to plead a plea; thus, in a criminal prosecution the prisoner pleads "guilty" or "not guilty," &c.; and under the common law practice, a defendant is said to "plead to the jurisdiction," to "plead in bar," &c., according to the nature of his plea. To "plead issuably," is to demur or plead some substantial defense to the action, so that it may be determined on its merits. 11 Sm. Ac. 101; Chit. Gen. Pr. 247.

§ 3. *Pleading over*.—In criminal practice, a prisoner charged with treason or

felony is said to "plead over" when in addition to, or after, pleading in abatement or specially, he pleads "not guilty." Arch. Cr. Pl. 128, 139; Rose. Cr. Ev. 205. See PLEA, § 2; RESPONDEAT OUSTER.

PLEAD, (in an order of the court to). 2 Gr. (N. J.) 344.

PLEADER.—A person whose business it is to draw pleadings. Formerly, when pleading at common law was a highly technical and difficult art, there was a class of men known as "special pleaders not at the bar," who held a position intermediate between counsel and attorneys. The class is now almost extinct, and the term "pleaders" is generally applied, in England, to junior members of the common law bar.

PLEADING.—NORMAN-FRENCH: *ple, plee*, an action or suit, (Britt. 33a;) from Latin *placitum*, which meant (1) a constitution or statute, (Dirkson, *Mani Lat. v. Placere; Placitum*;) and later (2) meetings of legislative and judicial bodies for passing laws and deciding litigation, and hence (3) the suits themselves (Diez *Ktym. Wortb. v. Plato*; Steph. Pl. App. n. 1.) In the early ages of the common law, the pleadings were oral statements, or arguments by the parties or their counsel, made alternately until the question in dispute was ascertained. 11 Sm. Ac. 77; 12 *Id.* 58; Steph. Pl. 23.

§ 1. The pleadings in an action in a court of record are written or printed statements delivered alternatively by the parties to one another, until the questions of fact and law to be decided in the action have been ascertained. They begin after the defendant has appeared, except where plaintiff's first pleading is served with the process. See ACTION, § 2.

§ 2. Each pleading commences with the title of the action, and states concisely the material facts (as to what are material facts, see *Millington v. Loring*, 6 Q. B. D. 190,) on which the party pleading relies, but not the evidence by which they are to be proved.

§ 3. The first pleading is the plaintiff's statement of claim, declaration or complaint (*qq. v.*), unless the indorsements on the writ or summons are so full that either the plaintiff or the defendant considers a further statement of the cause of action unnecessary.

§ 4. The next pleading is delivered by the defendant, and is either a plea, answer, demurrer, a statement of defense, a statement of defense and counter-claim (*q. v.*), or a combination of these.

§ 5. The next pleading is either a demurrer or a reply (*q. v.*), or a combination of both.

§ 6. If the reply is not merely a joinder of issue (*q. v.*), the next pleading is delivered by the defendant. This and the subsequent pleadings, if any, follow the names of the old pleadings at common law, viz., rejoinder, surrejoinder, rebutter and surrebutter (*q. v.*); but the rule generally in force, that no pleading subsequent to reply, other than a joinder of issue, shall be pleaded without leave of the court or a judge, coupled with the power of the judge to order issues to be settled, (see ISSUE, § 4,) and the power of amendment (*q. v.*), will in general prevent the pleadings from going so far.

§ 7. In any case, however, unless either party demurs simply, or makes default, or unless issues are settled, the ultimate result must be that one party joins issue upon the preceding pleading of his adversary, and then the pleadings are said to be closed.

§ 8. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading within the proper time, the pleadings are then deemed to be closed, and the statements of fact in the pleading last delivered are deemed to be admitted. The next step is the notice of trial (*q. v.*) As to judgment by default in other cases, see JUDGMENT, § 7.

§ 9. **Miscellaneous proceedings.**—There are some miscellaneous proceedings in which the pleadings are different from those in an action, *e. g.* petitions of right (*q. v.*), in which the pleadings after the petition itself follow the same course as those in an action at law or suit in equity under the old practice, (*infra*, §§ 11, 12;) and proceedings by *scire facias*, *extent*, traverse of office or inquisition, and criminal proceedings, as to which see INDICTMENT; INFORMATION, § 7 *et seq.*; PLEA.

§ 10. **Common law.**—Different systems of pleadings, except as to demurrers, prevail in the common law and equity courts. In a common law action, the pleadings consist of (1) the declaration; (2) plea; (3) replication; (4) rejoinder; (5) surrejoinder; (6) rebutter; (7) surrebutter. Co. Litt. 803b; 11 Sm. Ac. 77 *et seq.*; Steph. Pl. *passim*.

§ 11. **Chancery.**—In a suit in equity, the pleadings consist of (1) the bill of complaint; (2) either (a) a demurrer, (b) a plea, (c) an answer, (d) a disclaimer, or (e) a combination of these; and (3) replication. (Hunt. Eq. 12 *et seq.*; Mitf. Pl. *passim.*) Formerly rejoinders were also used in Chancery pleadings. (Mitf. Pl. 323.) According to modern practice, if the plaintiff requires to state fresh facts after the defendant has filed his answer or plea, he amends his bill.

PLEADING, (defined). 57 Ala. 145; 1 Minn. 17.

— (an affidavit is not). 7 Kan. 359.

— (in a statute). 109 Mass. 331.

PLEADING ISSUABLY.—See **PLEAD**, § 2.

PLEADING OVER.—See **PLEAD**, § 3.

PLEAS OF THE CROWN.—The criminal law department of English jurisprudence, so called because the sovereign, in whom centers the majesty of the whole community, is supposed by the law to be the person injured by every wrong done to that community, and is, therefore, in all cases, the proper prosecutor for every such offense. See the works, on this subject, of Coke (3 Inst.), Hale, or Hawkins.

PLEASURE, AT HER, TO SELL AND DISPOSE OF, (in a will). Boyl. Char. 307.

PLEASURE CARRIAGE, (defined). 9 Conn. 371, 374; 11 *Id.* 185, 191.

— (in a statute). 18 Johns. (N. Y.) 128; 19 *Id.* 444.

PLEBANUS.—A rural dean.—*Cowell.*

PLEBEITY, or PLEBITY.—The common or meaner sort of people; the plebeians.

PLEBIANA.—In old records, a mother church.

PLEBISCITE, or PLEBISCITUM.—Among the Romans, a law enacted by the common people, at the request of the tribune or some other plebeian magistrate, without the intervention of the senate; more particularly applied to the law which the people made, when, upon some misunderstanding with the senate, they retired to the Aventine mount.

PLEDGE.—

§ 1. A pledge is where the owner of a chattel agrees with another person that it shall be held by the latter (the pledgee) as security for the payment of a debt or performance of an obligation. This entitles the pledgee to hold the chattel until payment or performance, and, upon failure

of payment or performance at the proper time, to sell it; but until he does so, the pledgor may redeem it by payment or performance. Fish. Mort. 7, 485.

§ 2. Specific appropriation is sometimes called an "equitable pledge." Ranken *v.* Alfaro, 5 Ch. D. 786. See **APPROPRIATION**, § 3; see, also, **ANTICHRESIS**; **BAILEMENT**; **CHARGE**; **MORTGAGE**; **PAWN**.

PLEDGE, (defined). 37 Cal. 15; 8 Mart. (La.) 20, 57; 4 Den. (N. Y.) 227; 1 Sandf. (N. Y.) 248, 252; 6 Ired. (N. C.) L. 309; 3 Wheel. Am. C. L. 341; 2 Kent Com. 577.

— (what constitutes). 37 Cal. 15, 16; 6 Mass. 422; 10 Pick. (Mass.) 528; 43 Barb. (N. Y.) 607; 10 Johns. (N. Y.) 471; 12 *Id.* 146; 9 Wend. (N. Y.) 80.

— (what is not). 5 Pick. (Mass.) 59.

— (who may make). 5 Pick. (Mass.) 178.

— (what is sufficient consideration for). 12 Mass. 300.

— (effect of). 8 Mass. 150.

— (is a mortgage). 8 Cal. 260.

— (distinguished from "mortgage"). 2 Pick. (Mass.) 607; 1 Abb. (N. Y.) Pr. n. s. 63; 43 Barb. (N. Y.) 607; 8 Johns. (N. Y.) 96.

— (in a statute). 24 Wend. (N. Y.) 117.

PLEDGEE.—One who receives pledges; a pawnee.

PLEDGER, (rights of, in the thing pledged). 15 Mass. 389; 5 Binn. (Pa.) 457.

PLEDGERY.—Suretyship, or an undertaking or answering for another.

PLEDGES TO RESTORE.—In England, before the plaintiff in foreign attachment can issue execution against the property in the hands of the garnishee, he must find "pledges to restore," consisting of two householders, who enter into a recognizance for the restoration of the property, as a security for the protection of the defendant; for, as the plaintiff's debt is not proved in any stage of the proceedings, the court guards the rights of the absent defendant by taking security on his behalf, so that if he should afterwards disprove the plaintiff's claim he may obtain restitution of the property attached. (Brand. For. Att. 93.) A similar practice prevails in America, the terms "bond" or "undertaking" being used to designate the security required to be given. See **FOREIGN ATTACHMENT**.

PLEGII DE PROSEQUENDO.—Pledges to prosecute with effect an action of replevin.

PLEGII DE RETORNO HABENDO.

—Pledges to return the subject of distress, should the right be determined against the party bringing the action of replevin. 3 Steph. Com. (7 edit.) 422 n.

PLEGII ACQUIETANDIS.—See **DE PLEGII ACQUIETANDIS**.

PLEDGOR.—One who offers a pledge; a pawner.

PLENÁ ÆTAS.—Full age (*q. v.*)

Plena et celeris justitia fiat partibus (4 Inst. 67): Let full and speedy justice be done to the parties.

PLENA FORISFACTURA.—A forfeiture of all that one possesses.

PLENA PROBATIO.—Full proof; proof by the evidence of two witnesses, or the production of a public document.

PLENARTY.—Under the old ecclesiastical practice, when a defendant in an action of *quare impedit* pleaded that the church was full (*i. e.* that a clerk had been previously presented and instituted), he was said to plead plenarty. 2 Inst. 380. See **VACATION**.

PLENARY.

§ 1. **Confession.**—An admission or confession, whether in civil or criminal law, is said to be plenary when it is, if believed, conclusive against the person making it. Best Ev. 664; Rosc. Cr. Ev. 39.

§ 2. As to plenary causes in ecclesiastical or admiralty practice, see **CAUSE**, § 3.

PLENE ADMINISTRAVIT.—The name given to the defense set up by an executor or administrator when sued upon a debt of his testator or intestate, which he has no assets to satisfy; if he has some assets, but not enough to satisfy the debt, his defense is called a plea of *plene administravit preter*. Wms. Ex. 1803 *et seq.* See **JUDGMENT**, § 12.

PLENE COMPUTAVIT.—He has fully accounted. A plea in an action of account rendered to the effect that defendant has already fully accounted to the plaintiff.

PLENIPOTENTIARY.—A person who has full power and commission to do anything. A term applied, in international law, to ministers and envoys of the second rank. See **AMBASSADOR**; **MINISTER**.

PLENO LUMINE.—See **IN PLENO LUMINE**.

PLENUM DOMINIUM.—In the civil law, a title combining the right and the corporal possession of property, which possession could

not be acquired without both an actual intention to possess, and an actual seisin or entry into the premises, or part of them, in the name of the whole.

PLEVIN.—A warrant or assurance.

PLIGHT.—This word signifies an estate, with the habit and quality of the land; it extends to a rent-charge and to a possibility of dower. Co. Litt. 221 b.

PLOK PENNIN.—A kind of earnest used in public sales at Amsterdam.

PLOT.—See **PLAT**.

PLOUGH-ALMS.—The ancient payment of a penny to the church from every plough land. 1 Mon. Ang. 256.

PLOUGH BOTE.—An allowance of wood which tenants are entitled to, for repairing their implements of husbandry.

PLOUGHLAND, or FLOWLAND.—A quantity of land "not of any certain content, but as much as a plow can by course of husbandry plough in a year." Co. Litt. 69 a.

PLOUGH-MONDAY.—The Monday after Twelfth-Day.

PLOUGH-SILVER.—Money formerly paid by some tenants, in lieu of service to plough the lord's lands.

Plow land, (synonymous with "hide of land"). Shep. Touch. 93.

PLUNDERAGE.—In maritime law, embezzling goods on shipboard.

PLURAL.—LATIN: *pluralis*, from *plus*, *pluris*, more

Containing more than one; consisting of or designating two or more.—*Webster*.

Pluralis numerus est duobus contentus (1 Roll. 476): The plural number is satisfied by two.

PLURALIST.—One that holds more than one ecclesiastical benefice, with cure of souls.

PLURALITIES.—By several modern statutes no spiritual person can hold any two benefices at the same time, except in certain cases, in some of which a license or dispensation by the bishop is required. These are acts forbidding pluralities, *i. e.* the holding of benefices in plurality. Stats. 1 and 2 Vict. c. 106; 13 and 14 Vict. c. 98; 4 and 5 Vict. c. 39; Phillim. Ecc. L. 1170. See **CESSION**.

PLURALITY.—A candidate at an election who receives more votes than any other single candidate, but not more than all the others combined, is said to have received a plurality of the votes; if he had

received more than one-half the number of votes cast he would have had a "majority."

Plures cohæresdes sunt quasi unum corpus propter unitatem juris quod habent (Co. Litt. 163): Several co-heirs are, as it were, one body, by reason of the unity of right which they possess.

Plures participes sunt quasi unum corpus, in eo quod unum jus habent (Co. Litt. 164): Several parceners are as one body, in that they have one right.

PLURIES.—When an original and alias writ have been issued and proved neffectual, a third writ, called a "pluries writ," may frequently be issued; it is to the same effect as the two former, except that it contains the words "as we have often commanded you" ("*sicut pluries præcepimus*") after the usual commencement "we command you." 3 Bl. Com. 283; Arch. Pr. 585. See **ALIAS**.

Plus exempla quam peccata nocent: Examples hurt more than crimes.

Plus peccat auctor quam actor (5 Co. 99): The causer offends more than the performer.

PLUS PETITIO.—In the Roman law, a phrase denoting the offense of *claiming more* than was just in one's pleadings. This *more* might be claimed in four different respects, viz., (1) *Re*, i. e. in amount (e. g. £50 for £5); (2) *Loco*, i. e. in place (e. g. delivery at some place more difficult to effect than the place specified); (3) *Tempore*, i. e. in time (e. g. claiming payment on the 1st of August of what is not due till the 1st of September); and (4) *Causâ*, i. e. in quality (e. g. claiming a dozen champagne, when the contract was only for a dozen of wine generally). Prior to Justinian's time, this offense was in general fatal to the action; but under the legislation of the emperors Zeno and Justinian, the offense (if *re*, *loco*, or *causâ*) exposed the party to the payment of three times the damage (if any) sustained by the other side, and (if *tempore*) obliged him to postpone his action for double the time and to pay the costs of his first action before commencing a second.—*Brown*.

Plus valet consuetudo quam concessio: Custom is more powerful than grant.

Probably, the effect of this maxim, in law, is simply this, that the words of a deed not being inconsistent with the custom will not exclude the custom, which will therefore operate. See **EX-TRINSIC EVIDENCE**.

Plus valet quod agitur quam quod simulate concipitur: What is done more avails than what is pretended to be done.

Plus valet unus oculatus testis quam auriti decem (4 Inst. 279): One eye-witness is of more weight than ten ear-witnesses (or those who speak from hearsay).

PLYING FOR HIRE, (in act relative to public carriages). L. R. 6 Q. B. 357.

POACH.—To steal game on a man's land.

POACHING.—The popular name for the offense of unlawfully taking or destroying game (q. v.)

POCKET OF A., (indicates a pocket in the clothing worn by A.) 105 Mass. 171.

POCKET-JUDGMENT.—A statute-merchant which was enforceable at any time after non-payment on the day assigned, without further proceedings. See **STATUTE-MERCHANT**.

POCKET-SHERIFF.—When the English sovereign appoints a person sheriff who is not one of the three nominated in the Exchequer, he is called a pocket-sheriff. 1 Bl. Com. 342.

PENNA.—Punishment.

PENNA CORPORALIS.—Corporal punishment.

Pœna, ex delicto defuncti, hæres teneri non debet (2 Inst. 193): The heir ought not to be bound in a penalty for the crime of the defunct.

Pœna non potest, culpa perennis erit: Punishment cannot be, crime will be lasting.

PENNA PILLORALIS.—Punishment of the pillory.

Pœnæ potius molliendæ quam exasperandæ sunt (3 Inst. 220): Punishments should rather be softened than aggravated.

POINDING.—The Scotch term for taking goods, &c., in execution, or by way of distress. It is defined to be "the diligence (process) which the law has devised for transferring the property of the debtor to the creditor in payment of his debt." It is either real or personal; not that any inheritance is conveyed by poinding, but real poinding is a power of carrying off the effects on the land in payment of such debts as are *debita fundi*, or heritable; personal poinding is the poinding of moveables for debt or rent, &c. There is also a species of poinding by attaching cattle trespassing. See **Bell Dict.**

POINDING OF THE GROUND.—A poinding in Scotland, founded on heritable security, or other *debitum fundi*, for poinding or taking in execution all the goods on the lands over which the security extends.

POINTED OUT, (in a statute). 100 Mass 195.

POINTS.—In the paper books points are the chief grounds or heads of argu-

ment on which each party relies, on an argument of a question of law.

POISON.—A substance which, on being applied to the human body, internally or externally, is capable of destroying the action of the vital functions, or of placing the solids and fluids in such a state as to prevent the continuance of life.

The means of ascertaining the traces of poison, either on the living or dead body, is one of the most important subjects in legal medicine, and its importance is only equalled by its difficulty.

Poisons may be introduced into the system in various ways; through the nose, in the form of odors; through the lungs, by inspiration by the mouth and œsophagus; in the form of food; by the rectum, in the form of injection; through the skin, in some instances, by absorption.

The rapidity of the action of poisons varies considerably. Concentrated hydrocyanic acid destroys an adult man almost in an instant. Other poisons take away life within an hour, a few hours, a day, or a longer period. Some prove fatal after months.

It is murder if the poisoned man die within a year and a day.—*Wharton*.

POISON, (defined). 53 Cal. 147.

— (in a pharmacy act). L. R. 5 Q. B. 296.

— (in indictment for causing death by). 4 Car. & P. 571.

POLIE.—A measure of five and a half yards.

POLICE.—The regulation and government of a country or city, so far as regards its inhabitants; also, the officers appointed to preserve the peace and property of the citizens.

POLICE, (defined). 6 Oreg. 219, 222.

POLICE COURTS.—

§ 1. In **America**.—Inferior courts in Massachusetts, New Hampshire, New York, and perhaps some other States, having a jurisdiction wholly or chiefly criminal in its nature, and very limited in its extent. In respect to important offenses, they usually discharge merely the functions of justices of the peace, but have power to try some minor offenses in a

summary manner. A limited civil jurisdiction is sometimes also conferred upon them.

§ 2. In **London**.—Courts in which stipendiary magistrates, chosen from barristers of a certain standing, sit for the dispatch of business. Their general duties and powers are the same as those of the unpaid magistracy, except that one of them may usually act in cases which would require to be heard before two other justices.

POLICE DE CHARGEMENT.—In the French law, a bill of lading (*q. v.*)

POLICE JURY.—In Louisiana, a board of officers in a parish (county) corresponding to the "county commissioners" or "supervisors" of other States.

POLICE LAWS, (general principle of). 7 Cow. (N. Y.) 349.

POLICE OFFICER, or **POLICEMAN.**—*See* **POLICE**.

POLICE PURPOSES, (what includes). 20 Ohio St. 349.

POLICE REGULATIONS.—*See* **POLICE**.

POLICE SUPERVISION.—In England, subjection to police supervision, is where a criminal offender is subjected to the obligation of notifying the place of his residence and every change of his residence to the chief officer of police of the district, and of reporting himself once a month to the chief officer or his substitute. (Stat. 34 and 35 Vict. c. 112; Prevention of Crime Act, 1879; Steph. Cr. Dig. 5; 1 Russ. Cr. 68, 78.) Offenders subject to police supervision are popularly called "habitual criminals."

POLICIES OF INSURANCE, COURT OF.—*See* **COURT OF POLICIES OF INSURANCE**.

POLICY.—**GREEK**: πολιτεία, from πόλις, a city or State; mediæval **LATIN**: politia, government of a State. Diez Etym. Wortb. v. *Politia*.

§ 1. As applied to a statute, regulation, rule of law, course of action, or the like, policy refers to its probable effect, tendency or object, considered with reference to the social or political well-being of the State.

§ 2. **Public policy.**—Thus, certain classes of acts are said to be against public policy when the law refuses to enforce or recognize them on the ground that they have a mischievous tendency so as to be injurious to the interests of the State, (*Chit. Cont.* 618; *Chesterfield v. Janssen*, 1 White & T. Lead. Cas. 483,) apart from illegality

(*q. v.*) or immorality (*q. v.*) Thus, trading with an enemy without license from the crown (*Potts v. Bell*, 8 T. R. 548), marriage brokerage contracts (*Cole v. Gibson*, 1 Ves. 508), and agreements in general restraint of marriage or trade (*q. v.*) are instances of acts against public policy. *Mitchel v. Reynolds*, 1 Sm. Lead Cas. 356; 2 White & T. Lead. Cas. 125; *Egerton v. Brounlow*, 4 H. L. Cas. 1. For further details, see *Chitty, ubi supra*; *Poll. Cont.* 251 *et seq.*

§ 3. **Policy of the law.**—The “policy of the law” seems to be the same thing as public policy.

§ 4. **Policy of a statute.**—The “policy of a statute,” or “of the legislature,” as applied to a penal or prohibitive statute, means the intention of discouraging conduct of a mischievous tendency. See *Barton v. Muir*, L. R. 6 P. C. 184; *Bensley v. Bignold*, 5 Barn. & Ald. 335; *Poll. Cont.* 235. See, also, MALA IN SE.

POLICY OF INSURANCE.—*ITALIAN*: *polizza*, an instrument under seal, from *Latin*: *pollex*, in its secondary sense of “seal.” *Diez. Etym. Worth v. Polizza*.

§ 1. A policy is an instrument containing a contract of insurance, and is called a “maritime” (or marine), “fire,” “life or accident” policy, according to the nature of the insurance.

§ 2. **Maritime: Open—Valued.**—Maritime policies are either open or valued. An open policy is where the value of the thing insured is not stated in the policy, and must therefore be proved if a loss happen. A valued policy is where the value of the thing is settled by agreement between the parties and inserted in the policy. *Sm. Merc. Law* 344; *Maud & P. Mer. Sh.* 343.

§ 3. **Voyage—Time.**—An insurance may be effected either for a voyage or for a number of voyages, in either of which cases the policy is called a “voyage policy;” or the insurance may be for a particular period, irrespective of the voyage or voyages upon which the vessel may be engaged during that period, and the policy is then called a “time policy.”

§ 4. **Mixed.**—In addition to the two last-mentioned kinds of policy, there is a third, which is usually called a “mixed policy,” as, for instance, where a ship is insured “from A. to B. for a year.” This

is in effect a time policy with the voyage specified. *Id.* 345.

§ 5. **“Interest or no interest,” or wager policies.**—Before the acts forbidding insurances by persons having no interest in the subject-matter of insurance, it was sometimes provided in the policy that it should be valid whether the insurer had any interest or not, in order to dispense with proof of interest in case of loss; these were called “interest or no interest policies” or “wager policies.” *Maud & P. Mer. Sh.* 333. See **INTEREST**, § 7.

§ 6. **Life: Whole life policies.**—Life policies for the whole life of the *cestui que vie*, *i. e.* payable whenever the death happens, are called “whole life policies;” a policy for a term of years gives no right to the sum insured, unless the life drops within the period or the policy be an endowment policy, which is made payable at death or the expiration of a specified term of years, whichever event first happens.

§ 7. **Fire: Time—Floating.**—When a fire insurance is made for a limited period (*e. g.* a year) it is called a “time policy.” (*Isaacs v. Royal Insurance Co.*, L. R. 5 Ex. 296.) When it is made to insure not any specific goods, but the goods which may at the time of the fire be in a certain building, it is called a “floating policy.” *North British, &c., Co., v. London, &c., Co.*, 5 Ch. D. 560.

§ 8. As to the assignment of life and marine policies, see **ASSIGNMENT**, § 4. See **LOST OR NOT LOST**; **MEMORANDUM**; **UNDERWRITER**.

POLICY OF INSURANCE, (what is). 9 Bing. 320.

POLICY OF THE LAW, (in a statute). 75 Pa. St. 433.

POLITICAL ARITHMETIC.

—An expression sometimes used to signify the art of making calculations on matters relating to a nation; the revenues, the value of land and effects, the produce of lands and manufactures, the population, and the general statistics of a country.—*Wharton*.

POLITICAL, or CIVIL LIBERTY.—Natural liberty, restrained by human law so far as is necessary and ex-

pedient for the public advantage. *See* 2 Steph. Com. (7 edit.) 466.

POLITICAL ECONOMY.—The science which treats of the administration of the revenues of a nation; or the management and regulation of its resources, and productive property and labor. *See* Smith Wealth of Na.; Mill Pol. Ec.

POLITICS.—The science of government; the art or practice of administering public affairs.

POLITY.—The form of government; civil constitution.

POLL.—The head; a catalogue or list of persons; a register of heads. Also, the act of giving, receiving and registering votes at an election. *See* CHALLENGE, § 2; DEED, § 2; POLL TAX; POLLING THE JURY.

POLLARDS, or POLLENGERS.—Trees which have been lopped, distinguished from timber trees. Plowd. 649.

POLL-EVIL, (defined). Oliph. Hors. 49.

POLLICITATION.—In the civil law, a promise before it is accepted.

POLLING THE JURY.—To *poll* a jury is to require that each juror shall himself declare what is his verdict. This may be done, at the instance of either party, at any time before the verdict is recorded, according to the practice in some States. (*See* 3 Cow. (N. Y.) 23; 18 Johns. (N. Y.) 188; 1 Ill. 109; 7 Id. 342; 9 Id. 336.) In some States, it lies in the discretion of the judge. (1 McCord (S. C.) 24, 525; 22 Ga. 431.)—*Bouvier*.

POLLS.—The place where electors cast in their votes.

POLLS, CHALLENGE TO THE.—*See* CHALLENGE, § 2.

POLLS, RATABLE, (in the constitution). 7 Mass. (Supp.) 523.

POLL-TAX.—A capitation tax. It was formerly assessed, in England, by the head on every subject according to rank, and is still assessed in a few of the States, and its payment insisted on as a prerequisite to the right to vote; but this would seem to be inconsistent with the

American idea of the freedom of the ballot.

POLYANDRY.—The state of a woman who has several husbands. *See* BIGAMY.

**Polygamia est plurium simul viro-
rum uxorumve connubium** (3 Inst. 88): Polygamy is the marriage with many husbands or wives at one time.

POLYGAMY.—Plurality of wives or husbands. (*See* BIGAMY.) It is prohibited by the Christian religion, but it is permitted by some others.

POLYGARCHY.—That kind of government which is in the hands of many.

POND.—A small lake or pool of standing water. *See* POOL.

POND, (includes what). 1 Chit. Gen. Pr. 189

Ponderantur testes, non numerantur: Witnesses are weighed, not counted.

PONDUS.—Poundage, *i. e.* a duty paid to the crown according to the weight of merchandise.

PONDUS REGIS.—The standard weight appointed by the ancient English kings.—*Cowell*.

PONE.—If goods had been replevied by virtue of a *replegiari facias* (which was rarely if ever the case), the plaintiff in a county court was removed by writ of *pone*. It was an original writ obtained from the cursitor, bearing *teste* after the entry of the plaint in the county court, and returnable on a general day in term, where-soever, &c. It was also the proper writ to remove all suits which were before the sheriff by writ of justices. 3 Steph. Com. (7 edit.) 280.

PONE PER VADIUM.—An obsolete writ to the sheriff to summon the defendant to appear and answer the plaintiff's suit, on his putting in sureties to prosecute. It was so called from the words of the writ, *pone per vadium et salvos plegios*, "put by gage and safe pledges, A. B., the defendant." It issued out of the Common Pleas, being grounded on the non-appearance of the defendant, at the return of the original writ; and thereby the sheriff was commanded to attach him by taking gage, *i. e.* certain of his goods which he should forfeit if he did not appear, or by making him find safe pledges or sureties, who should be amerced in case of his non-appearance. 3 Bl. Com. 210.

PONENDIS IN ASSISIS.—An abolished writ to impanel juries.—*F. N. B.* 165.

PONENDUM IN BALLIUM.—A writ commanding that a prisoner be bailed in cases bailable.—*Reg. Orig.* 133.

PONENDUM SIGILLUM AD EXCEPTIONEM.—See *DE PONENDO SIGILLUM*, &c.

PONIT SE SUPER PATRIAM.—He puts himself upon the country. A phrase expressing, in English criminal law, that the accused pleads not guilty. The plea is entered of record usually by the abbreviation *po. se.*

PONTAGE.—Duty paid for the reparation of bridges; also, a due to the lord of the fee for persons or merchandises that pass over rivers, bridges, &c.—*Cowell.*

PONTIBUS REPARANDIS.—A writ directed to the sheriff, &c., requiring him to charge one or more to repair a bridge.—*Reg. Orig.* 153.

POOL.—A small pond of standing water. By the grant of a pool, both the land and water will pass. *Co. Litt.* 5.

POOR.—The poor the law takes notice of are: (1) Poor by impotency and defect; as the aged or decrepit, fatherless or motherless, those under sickness, and persons who are idiots, lunatics, lame, blind, &c., these the overseers of the poor are to provide for. (2) Poor by casualty; such as housekeepers decayed or ruined by unavoidable misfortunes, poor persons overcharged with children, laborers disabled, and these, having ability, are to be set to work, but, if not able to work, they are to be relieved with money. (3) Poor by prodigality and debauchery, also called "thrifless poor;" as idle, slothful persons, pilferers, vagabonds, strumpets, &c., who are to be sent to the house of correction, and be put to hard labor to maintain themselves, or work is to be provided for them, that they do not perish for want; and, if they become impotent by sickness, or if their work will not maintain them, there must be an allowance by the overseers of the poor for their support.—*Jacob.*

Poor, (defined). 14 Kan. 418, 422.
— (in bequest to). 3 Wheel. Am. C. L. 467; 7 Ch. D. 745.

POOR DEBTOR'S OATH.—By statute, in some of the States, one who is arrested or imprisoned for debt, or on mesne process in an action on contract, may obtain his discharge on making oath that he has no property with which to pay the debt.

POOR INHABITANTS, (legacy to). *Amb.* 422.

POOR LAW.—

§ 1. That part of the law which relates to the public or compulsory relief of the indigent poor. The subject is regulated, in England, by a series of acts of parliament from 27 Hen. VIII. c. 25, to the pre-

sent time. (See the Index to the Statutes, tit. *Poor*, and the notes to 3 Steph. Com. 42 *et seq.*) By Stat. 43 Eliz. c. 2, overseers of the poor were appointed in every parish, to provide for the relief of paupers settled in their parish, (*see SETTLE*.) the necessary funds being produced by a poor-rate levied on property within the parish. (*See RATE*) The system of overseers being unsatisfactory, the Stat 22 Geo. III. c. 83, authorized any parish to appoint guardians in lieu of overseers, and also to enter into a voluntary union with one or more other parishes for the more convenient accommodation, maintenance and employment of their paupers in common. (*See GUARDIANS OF THE POOR; OVERSEER; VESTRY.*) In 1833, the general management of the poor, and of the funds for their relief, was placed under the superintendence and control of a body called the "poor law commissioners," whose functions were in 1847 transferred to a new authority called the "poor law board," and in 1871 to the local government board (*q. v.*), who have the power of making general poor law rules (subject to the approval of the Privy Council), and of compulsorily consolidating any two or more parishes into one union for the relief and management of their paupers, (Stat. 34 and 35 Vict. c. 70; 28 and 29 Vict. c. 79,) or for constituting separate parishes or amalgamating parts of parishes with other parishes. (Stat. 39 and 40 Vict. c. 61; Poor Law Act, 1879.) Each State has its own system of poor laws, but all are more or less founded upon the early English statutes above mentioned.

§ 2. All those who stand in need of relief are entitled to be relieved in the parish (or township) in which they happen to be, whether they are "settled" or "casual" poor. (*See SETTLEMENT; REMOVAL; IRREMOVABILITY.*) But in many cases there is a person bound to maintain a pauper in exoneration of the parish or town; as where the pauper has a wife, husband, child, parent or grandparent, able to maintain him. There are also numerous statutes imposing penalties and punishments on persons who refuse or neglect to work to maintain their families, or desert them, leaving them chargeable to the parish. 3 Steph. Com. 56 *et seq.*

POOR LAW GUARDIANS.—*See* GUARDIANS OF THE POOR.

POOR OF THE PARISH, (bequest to). 5 Har. & J. (Md.) 392.

POOR PEOPLE, (in preamble of a statute). Boyl. Char. 31.

— (devise to). 1 Vern. 225.

POOR PERSON, (in a statute). 10 Cush. (Mass.) 238.

POOR RATE.—*See* RATE.

POOR RELATIONS, (in a will). 17 Ves. 371; 8 Com. Dig. 474.

POOREST RELATIONS, (in a will). Amb. 595.

POPE.—The bishop of Rome, and supreme head of the Roman Catholic Church. 4 Steph. Com. (7 edit.) 168-185.

POPE NICHOLAS' TAXATION.—The first fruits (*primitiæ* or *annates*) were the first year's profits of all the spiritual preferments in the kingdom according to a rate made by Walter, Bishop of Norwich, in the time of Pope Innocent II., and afterwards advanced in value in the time of Pope Nicholas IV. This last valuation was begun A. D. 1288, and finished 1292, and is still preserved in the Exchequer. The taxes were regulated by it till the survey made in the 26th year of Henry VIII. 2 Steph. Com. (7 edit.) 532.

POPERY.—The religious doctrines and practices adopted and maintained by the Church of Rome. *Consult* 2 Steph. Com. (6 edit.) 401; 4 *Id.* 168-185; and 4 Broom & H. Com. 61-66.

POPULACE, or POPULACY.—The vulgar; the multitude.

POPULAR ACTIONS.—Such actions as are maintainable by any one for recovery of the penalty incurred under some penal statute. It is called a popular action because it is a proceeding which may be taken not by any one person in particular, but by any of the people who think proper to prosecute it. These are the *Publica* (*i. e.* *Populica*) *Judicia* of Roman law.—*Brown.* *See* ACTION, § 9.

POPULISCITUM.—In the Roman law, the name of an enactment, law or ordinance made by the *populus*, or whole Roman people, assembled in *comitia centuriata*.

PORRECTING.—Producing for examination or taxation, as porrecting a bill of costs, by a proctor.

PORT.—

§ 1. A port (or port of entry, as it is frequently called,) is a harbor where customs

officers are established, and where goods are either imported or exported to foreign countries, as distinguished from a mere harbor or haven, which is simply a place, natural or artificial, for the safe riding of ships. It is said that every port comprehends a city or borough (sometimes called *caput portus*), with a market and accommodation for sailors. No person may land customable goods on his own land or elsewhere than at a port. In England, the privilege of erecting ports and taking dues and tolls as incident thereto is part of the royal prerogative, and can only belong to a subject as a franchise by grant or prescription from the crown, or by act of parliament. The owner of the port is bound to keep it in repair. (Coul. & F. Waters 42.) Under the Customs Laws Consolidation Act, 1878, (§ 11,) the commissioners of the treasury may, for the purpose of the customs laws, appoint ports and quays, and alter or annul any existing port. *See* TOLL.

§ 2. In other respects a port is the same thing as a harbor (*q. v.*) *See* SANITARY AUTHORITY.

PORT, (in a policy of insurance). 10 Johns. (N. Y.) 120, 126; 11 *Id.* 9; 4 Bligh. n. s. 578.

— (in a statute). 2 Barn. & Ad. 43; L. R. 6 Q. B. 632, 642.

— (synonymous with "district"). 3 Mas. (U. S.) 153, 155.

— (synonymous with "harbor"). 9 Metc. (Mass.) 371, 377.

— (synonymous with "water"). 1 Cowp. 107.

PORT CHARGES, DUES, or TOLLS.—Pecuniary exactions upon vessels availing themselves of the commercial conveniences and privileges of a port.—*Abbott.*

PORT OF BOSTON, (what is included within). 119 Mass. 179, 185.

PORT OF DESTINATION, (in an insurance policy). 12 Gray (Mass.) 501, 516; 103 Mass. 241; 8 Am. L. Reg. 362.

PORT OF DISCHARGE, (what is). 13 East 397.

— (what is not). 1 Conn. 184, 195.

— (in a policy of insurance). 1 Conn. 333; 8 Mass. 527; 104 *Id.* 510; 6 Am. Rep. 261; 15 East 295.

PORT OF ENTRY.—*See* PORT, § 1.

PORT OR PORTS OF LOADING, (in marine policy). L. R. 4 Q. B. 523; 5 *Id.* 584.

PORT RISK, (in marine policy). 71 N. Y. 453.

PORTABLE, (synonymous with "movable"). 83 N. C. 123.

PORTATICA.—Port-duties charged on ships.

PORTER.—An officer who carries a white or silver rod before the justices in *eyre*, so called *à portando virgam*; also, a person employed to carry messages, parcels, &c.

PORTERAGE.—A kind of duty formerly paid at the English custom-house to those who attended the water-side, and belonged to the package-office; but it is now abolished. Also, the charge made for sending parcels.

PORTGREVE, or PORTREEVE.—A magistrate in certain sea-coast towns.—*Cowell*.

PORTION.—

§ 1. That part of the estate of a parent, or of one standing *in loco parentis*, which is given to a child.

§ 2. In England, when land is settled in strict settlement, that is to say, on the husband for life, with remainder in tail to the eldest son, it is usual to provide for the payment to the "younger children" (i. e. all except the one who takes the estate) of gross sums of money, on their attaining twenty-one, or, in the case of daughters, marrying. To enable these portions to be raised, the land is generally limited to trustees for a long term of years with power to mortgage it. *Elph. Conv.* 385; *Wats. Comp. Eq.* 586. See **SETTLEMENT**; **TERM**.

§ 3. As to the operation of the rule against double portions, by which a child is prevented from taking both a sum paid to him as a portion and a legacy bequeathed to him as a portion, see **SATISFACTION**.

PORTION, (defined). 2 Atk. 522.
— (in a marriage settlement). 1 P. Wms. 418, 448; 2 *Id.* 436.
— (in a will). 12 Mass. 491; 2 P. Wms. 669, 672; 1 T. R. 105.

PORTION DISPONIBLE.—In the French law, a parent having one legitimate child may dispose of one-half only of his property; leaving two, one-third only; and leaving three or more, one-fourth only; and it matters not whether the disposition is *inter vivos*, or by will.—*Brown*.

PORTION OF MY PROPERTY REMAINING, (in a will). 13 B. Mon. (Ky.) 291.

PORTION OF TITHES, (what is). 4 Co. 35.

PORTIONS, (in a will). L. R. 7 Ch. 356.

PORTIONER.—

§ 1. In old English law.—A minister who serves a benefice, together with others, so called because he has only a portion of the tithes or profits of the living; also, an allowance which a vicar commonly has out of a rectory or impropriation.—*Cowell*.

§ 2. In the Scotch law.—The proprietor of a small fen or portion of land.—*Bell Dict.*

PORTMEN.—The burgesses of Ipswich and of the Cinque Ports.—*Camden*.

PORTMOTE.—A court held in haven towns or ports, and sometimes in inland counties.—*Termes de la Ley*.

PORTORIA.—In the civil law, duties paid in ports on merchandise.

PORTS.—See **PORT**.

PORTS, (in a policy of insurance). 2 Dow. & C. 129.

PORTS AND HAVENS, (in a statute). 108 Mass. 169.

PORTSALE.—A public sale of goods to the highest bidder; also, a sale of fish as soon as it is brought into the haven.—*Cowell*.

PORTSOKA, or PORTSOKEN.—The suburbs of a city, or any place within its jurisdiction.—*Somner*; *Cowell*.

PORTUAS.—A breviary.—*Cowell*.

Portus est locus in quo exportantur et importantur merces (2 Inst. 148): A port is a place where goods are exported or imported.

POSITIO.—A claim.

POSITIVE CONDITION.—See **CONDITION**, § 12.

POSITIVE EVIDENCE.—Proof of the very fact, opposed to negative evidence.

POSITIVE FRAUD.—Actual fraud. See **FRAUD**, § 1 *et seq.*

POSITIVE LAW.—Law which is not an enforcement of the moral law, and to which disobedience is *malum prohibitum*, not *malum in se*. See **MALA PROHIBITA**; **MALA IN SE**.

Posito uno oppositorum negatur alterum (3 Rolle 422): One of two opposite positions being affirmed, the other is denied.

POSSE.—A possibility. A thing is said to be *in posse* when it may possibly be; *in esse* when it actually is.

POSSE COMITATUS.—The power of the county. An assemblage of the able-bodied male inhabitants of a county, except peers and clergymen. The sheriff of the county may summon the *posse comiti-*

talitū either to defend the county against the king's enemies, or to keep the peace, or to pursue felons. Persons failing to obey the summons are liable to fine and imprisonment. 2 Steph. Com. 628; 4 Id. 254; Stat. 13 Hen. IV. c. 7.

POSSESSED, (defined). 1 Wash. (Va.) 52.

— (equivalent to "ownership" in a will). 22 Conn. 462, 472.

— (in tax act). 3 Mass. 428, 429.

POSSESSIO.—*Possessio*, in its primary sense, is the condition or power by virtue of which a man has such mastery over a corporeal thing as to deal with it at his pleasure, and to exclude other persons from meddling with it. This condition or power is detention; and it lies at the bottom of all legal senses of the word "possession." This possession is no legal state or condition, but it may be the source of rights, and it then becomes *possessio* in a juristical or legal sense. Still, even in this sense, it is not in any way to be confounded with property (*proprietas*). A man may have the juristical possession of a thing without being the proprietor, and a man may be the proprietor of a thing without having the juristical possession of it, and consequently without having the detention of it. (D. 41, 2, 12.) Ownership is the legal capacity to operate on a thing according to a man's pleasure, and to exclude everybody else from doing so. Possession, in the sense of detention, is the actual exercise of such a power as the owner has a right to exercise. The term *possessio* occurs in the Roman jurists in various senses. There is *possessio* generally, and *possessio civilis*, and *possessio naturalis*.

Possessio denoted, originally, bare detention; but this detention, under certain conditions, becomes a legal state, inasmuch as it leads to ownership through *usucapio*. Accordingly the word *possessio*, which required no qualification so long as there was no other notion attached to *possessio*, requires such qualification when detention becomes a legal state. This detention, then, when it has the conditions necessary to *usucapio*, is called *possessio civilis*, and all other *possessio* as opposed to *civilis* is *naturalis*.—*Smith Dict. Antiq.*; Sand. Just. (5 edit.) 135 *et seq.*

POSSESSIO CIVILIS.—In the Roman law, a legal possession, *i. e.* a possessing accompanied with the intention to be or to thereby become owner; and as so understood, it was dis-

tinguished from *possessio naturalis*, otherwise called *nuda detentio*, which was a possessing without any such intention. *Possessio civilis* was the basis of *usucapio* or of *longi temporis possessio*, and was usually (but not necessarily) adverse possession.—*Brown*.

POSSESSIO FRATRIS.—Under the old law of descent, where A. had a son and a daughter by one marriage, and another son by a subsequent marriage, and died intestate seized of land in fee-simple, then if the eldest son entered on the land and died without issue, the daughter took the land, because the descent was traced from the person last seized; and in this case the younger son, being of the half-blood to his brother, could not inherit to him. This was called a *possessio fratris*, the rule being *possessio fratris de feodo simplici facit sororem esse hæredem* (the possession of the brother makes the sister heir). (Litt. § 8; Co. Litt. 14b.) Now descent is traced from the purchaser and not from the person last seized, so that the *possessio fratris* has been abolished. Wms. Seis. 76.

Possessio fratris de feodo simplici facit sororem esse hæredem (3 Co. 41): The brother's possession of an estate in fee-simple makes the sister to be heir.

POSSESSIO LONGI TEMPORIS.—*See* USUCAPIO.

POSSESSIO NATURALIS.—*See* POSSESSIO CIVILIS.

POSSESSION.—

§ 1. In its primary sense, possession is the visible possibility of exercising physical control over a thing, coupled with the intention of doing so, either against all the world, or against all the world except certain persons. There are, therefore, three requisites of possession. First, there must be actual or potential physical control.* Secondly, physical control is not possession, unless accompanied by intention; hence, if a thing is put into the hand of a sleeping person, he has not possession of it.† Thirdly, the possibility and intention must be visible or evidenced by external signs, for if the thing shows no signs of

* "Whoever holds a piece of gold in his hand is the possessor of it, of this there is no doubt; and from this and similar cases the idea of *actual bodily contact* has been abstracted, and thus is made the essential in every acquisition of possession. But in the above case something else exists, which is not necessarily connected with any bodily contact, *viz.*, the physical power of dealing with the subject immediately and of excluding any foreign agency. . . . Whoever at any moment is able to take up something which lies before him has just as much uncontrollable dominion over it as if he had in fact taken it

up." (Savigny Possession § 15.) *See* further as to possession, Bruns (Das Recht des Besitzes im Mittelalter), 1 Holtz. Encycl. 292; 1 Bentham's Works 327; 3 Id. 188; Aust. Juris. 53; Hunt. Rom. L. 199 *et seq.*, where a new theory of the doctrine of possession in Roman law is developed, and the whole subject discussed with much learning.

† "Furius, et pupillus sine auctoritate, non potest incipere possidere, quia affectionem tenendi non habent, licet maxime corpore suo rem contingant, sicuti si quis dormienti aliquid in manu ponat." Dig. xli. 2, fr. 1, § 3.

being under the control of any one, it is not possessed; hence, if a piece of land is deserted and left without fences or other signs of occupation, it is not in the possession of any one, and the possession is said to be vacant. The question whether possession of land is vacant is of importance in actions for recovering possession, as in such cases service of the writ is effected by posting a copy of it on part of the land. Rules of Court, ix. 8. *See* SERVICE.

§ 2. "Possession" as opposed to "enjoyment," "reversion," &c.—Possession does not necessarily imply use or enjoyment; thus, a warehouseman has possession of the goods entrusted to him, without having the use of them. But inasmuch as the use of property cannot be had without possession, the term "possession" is frequently used as implying use and enjoyment, and in this sense is opposed to "reversion," "remainder," "expectancy," "action," &c.; thus, a tenant for life in possession is one who has the immediate benefit of the property, (*e. g.* by occupation, receipt of the rents or income, &c.) as opposed to a tenant in remainder, whose right to the enjoyment of the property is deferred (*see* ESTATE, § 9 *et seq.*); a chose in possession is a chattel which can be immediately used, such as a book, while a chose in action is merely the right to obtain possession of a chattel, as in the case of a debt. 2 Bl. Com. 396. *See* CHOSE; REDUCTION INTO POSSESSION.

§ 3. Right of possession.—Possession gives rise to peculiar rights and consequences. The principal is that a possessor is presumed to be absolute owner until the contrary is shown, (Wms. Seis. 7; Best Ev. 477,) and is protected by law in his possession against all who cannot show a better title to the possession than he has. Thus, if a person takes possession of a piece of deserted land no one can eject him from it except the rightful owner, (similarly in the case of a chattel: *Armory v. Delamire*, 1 Str. 504; 1 Sm. Lead. Cas. 357,) and even he only by taking legal proceedings to prove his title. (As to the reason for this protection, *see* Savigny, § 6;

Holl. Jur. 129.) This is called the "right of possession."* Ordinarily, possession (unless combined with other elements) does not affect the question of ownership; and, therefore, if A., being wrongfully in possession of a thing, conveys it to B., B. cannot retain it against the true owner, even though he may have believed A. to be the true owner and paid him the value of the thing. But in a few cases possession is sufficient to enable a person without title to give a perfect title to a *bonâ fide* acquirer. Thus, if A. steals money or a negotiable instrument from B. and transfers it for value to C., who has no notice of the theft, B. cannot claim it from C. (*Miller v. Race*, 1 Burr. 452; 1 Sm. Lead. Cas. 538. *See* EARMARK; MARKET OVERT; NEGOTIABLE.) So, under the English Factors Acts (*q. v.*), a person in possession of goods belonging to another may, in certain cases, sell or pledge them, so as to give a good title to the purchaser or pledgee. As to long-continued adverse possession, *see infra*, § 10.

§ 4. Criminal law.—In criminal law, possession frequently gives rise to a presumption against the possessor, so as to shift the burden of proof on him. Thus, the possession of stolen goods, where recent and exclusive, is, in many cases, sufficient to raise a presumption of larceny against the possessor, which he must rebut by showing that he came honestly by them. Best Ev. 293.

With reference to its origin, possession is either with or without right.

§ 5. Rightful possession—Right to possession.—Rightful possession is where a person has the right to the possession of (*i. e.* the right to possess) property, and is in the possession of it with the intention of exercising his right. This kind of possession necessarily varies with the nature of the right from which it arises; a person may be in possession of a thing by virtue of his right of ownership, or as lessee, bailee, &c.; or his possession may be merely permissive, as in the case of a licensee; or it may be a possession coupled with an interest, as in the case of an auc-

*It is hardly necessary to point out the distinction between the right of possession and the right to possession. *Supra*, § 2, and *infra*, § 5.)

The latter is one of the rights of ownership (*q. v.*)

tioner. (*Williamis v. Millington*, 1 H. Bl. 81, cited in *Woolfe v. Horne*, 2 Q. B. D. 358.) So the right may be absolute, *i. e.* good against all persons; or relative, *i. e.* good against all with certain exceptions. Thus, a carrier or borrower of goods has a right to their possession against all the world except the owner.

§ 6. **Derivative possession.**—In jurisprudence, the possession of a lessee, bailee, licensee, &c., is called “derivative possession,” while in law the possessory interest of such a person, considered with reference to his rights against third persons who interfere with his possession, is usually called a “special” or “qualified property,” meaning a limited right of ownership. *Holl. Jur* 127 *et seq.* See PROPERTY.

§ 7. **Wrongful possession.**—Possession without right is called “wrongful” or “adverse,” according as the rights of the owner or those of the possessor are considered. Wrongful or naked possession is where a person takes possession of property to which he is not entitled, so that the possession and the right of possession are in one person, and the right to possession in another. Where an owner is wrongfully dispossessed he has a right of action to recover it, or, if he has an opportunity, he can exercise the remedy of recaption in the case of goods, or of entry in the case of land. (See ENTRY, § 3; RECAPTION.) Formerly, the doctrine of wrongful possession was of more importance than now, owing to the peculiar rules applicable to disseisin, intrusion, feoffments, &c. See the subject discussed in *Taylor v. Horde*, 1 Burr. 60; 2 Sm. Lead. Cas. 681.

§ 8. **Adverse possession.**—Adverse possession is a possession inconsistent with the right of the true owner; in other words, where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than as owner, *i. e.* with the intention of excluding all persons from it, including the rightful owner, he is in adverse possession of it. Thus, if A. is in possession of a field of B.’s, he is in adverse possession of it, unless there is something to show that his possession is consistent with a recognition of B.’s title. *Ward v. Carttar*, L. R. 1 Eq. 29.

§ 9. **Adverse ab initio, or by matter subsequent.**—Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so by matter subsequent. Thus, if a mere trespasser takes possession of A.’s property, and retains it against him, his possession is adverse *ab initio*. But if A. grants a lease of land to B., or B. obtains possession of the land as A.’s bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. In the case of a lessee, his possession becomes adverse (1) if he discontinues payment of rent. (Stat. 3 and 4 Will. IV. c. 27, § 3.) This section abolished the contrary rule which formerly prevailed, and it is hence sometimes said that the statute abolished the old rule of non-adverse possession. Or (2) if he pays rent to a person claiming the land adversely to the rightful owner, and does not afterwards pay any rent to the rightful owner; in the latter case the rule only applies, in England, if the rent amounts to 20s. or upwards. (*Id.* § 9.) In the case of persons other than lessees, the rule seems to be that possession is never considered adverse if it can be referred to a lawful title, and that where a person obtains possession by a permissive or fiduciary title, or by his own agreement, or by judgment of law (*e. g.* under an *elegit*), he and all claiming under him are presumed to hold possession according to that right. *Thomas v. Thomas*, 2 K. & J. 88; *Pelly v. Bascomb*, 4 Giff. 394; *Saunders v. Annanley*, 2 Sch. & L. 73; *Nepean v. Doe*, 2 Sm. Lead. Cas. 584, and the cases referred to in *Shelf. R. P. Stat.* 148.

§ 10. **Effects of adverse possession.**—Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, (*supra*, § 3,) but also, if the adverse possessor remains in possession for a certain period of time, produces the effect either of barring the right of the true owner, (the Land Transfer Act, 1875, provides (§ 21) that as against a registered proprietor under the act there is said to be no acquisition of title by adverse possession,) and thus converting the possessor into the owner, or of depriving the true owner of

his right of action to recover his property,* (*see* LIMITATION, § 6; PRESCRIPTION;) and this although the true owner is ignorant of the adverse possessor being in occupation. *Rains v Buxton*, 14 Ch. D. 537.

With reference to the mode of its exercise, possession is of several kinds.

§ 11. **Actual, or in fact.**—A person has actual possession (*de facto* possession, possession in fact,) of a thing when he exercises physical control over it. Thus, a person who holds a thing in his hand has actual possession of it, and the lessee of a house is in actual possession of it while he occupies it. For instances of actual possession, *see* *Lows v. Telford*, 1 App. Cas. 414; *Coverdale v. Charlton*, 4 Q. B. D. 118. As to what is "actual possession" within the meaning of the Reform Act, *see* *Wms. Sett.* 14; *Hadfield's Case*, L. R. 8 C. P. 306.

§ 12. **Constructive, or in law.**—A person has constructive possession (or possession in law) (1) when some one representing him has actual possession of the thing. Thus, if A., the owner of the land, leases it to B., A. has constructive possession by B., and if A. dies intestate, leaving C. his heir, C. is immediately in constructive possession of the land by B., although he has never had actual possession; (2) a person may have constructive possession of one thing because he has actual possession of another; thus, if a person is in legal possession of a house, he is ordinarily in constructive possession of the goods in it, or if he is in legal possession of a portion of an estate or farm, he is in constructive possession of the whole of it. The doctrine of constructive possession does not apply to a wrongdoer or person without title. *Ex parte Fletcher*, 5 Ch. D. 809; *Bristow v. Cormican*, 8 App. Cas. 661; *Coverdale v. Charlton*, 4 Q. B. D. 104. *See, also*, *Kinsman v. Rouse*, 17 Ch. D. 104.

§ 13. **Joint, or concurrent.**—Joint or concurrent possession, is where two or more persons have possession of the same

thing at the same time. *In re Fells*, 4 Ch. D. 509.

§ 14. **Apparent and formal possession.**—Under the Bills of Sale Act, (Stat. 41 and 42 Vict. c. 31; *Revs. Bankr.* 459,) the validity of an unregistered bill of sale frequently depends upon whether the owner of the goods remains in "apparent possession" of them, having merely given "formal possession" to the creditor. Thus, where the holder of an unregistered bill of sale of furniture put a man into the house, but did not interfere with the furniture in such a manner as to show that it had been taken out of the debtor's control, it was held that the possession so taken was merely formal, and that the goods remained in the apparent possession of the debtor. (*Ex parte Lewis*, L. R. 6 Ch. 626. *See* §§ 4 and 8 of the act.) As to possession excluding the doctrine of reputed ownership, *see* *Ex parte National Ass. Co.*, 10 Ch. D. 408. *See* BILL OF SALE, § 4, n.

As to possession in the law of bankruptcy, *see* ORDER AND DISPOSITION; REPUTED OWNERSHIP.

§ 15. **Criminal law.**—In criminal law, possession is sometimes distinguished from custody. Thus, if the owner of a chattel gives it to his servant to keep for him for a specific purpose, or until he requires it again, the chattel is in the custody of the servant and in the possession of the master; if, however, the servant receives anything for his master from a third person (not being a fellow-servant), *e. g.* a tradesman, he has the possession, and not merely the custody of it until he places it in his master's possession by putting it into a place or thing belonging to his master, or by some similar act. The importance of the distinction is with reference to the difference between larceny and embezzlement (*q. v.*) *Steph. Cr. Dig.* 195, 376. *See* CUSTODY.

§ 16. **Possession—Seisin.**—Possession is sometimes used in the old books in the technical sense of seisin or feudal possession of land. "It is to be knowne that there is a *jus proprietatis*, a right of ownership; *jus possessionis*, a right of seisin or possession, and *jus proprietatis et possessionis*, a right both of property and possession; and this is antiently called *jus duplicatum*, or *droit droit*. For example, if a

* 2 Sm. Lead. Cas. 681 *et seq.* Formerly the term adverse possession was used to signify the possession of a person who had ousted the seisin of the true owner, *e. g.* by disseisin, abatement, &c., as opposed to non-adverse possession, which existed when a person was in the actual enjoy-

ment of land without having technically dispossessed the owner, so that during that time the period of limitation under the Stat. 21 Jac. I. c. 16, did not run. This doctrine was abolished by Stat. 3 and 4 Will. IV. c. 27; 2 Bl. Com. 266 n.

man be disseised of an acre of land, the disseisee hath *jus proprietatis*, the disseisor hath *jus possessionis* (but see 2 Bl. Com. 195); and if the disseisee release to the disseisor, hee hath *jus proprietatis et possessionis*." Co. Litt. 266a. See SEISIN; DROIT; POSSESSIO FRATRIS.

§ 17. **Possession and seisin.**—Possession is also sometimes opposed to seisin. "The difference between possession and seisin is: lessee for years is possessed, and yet the lessor is still seised; and therefore the terms of law are, that of chattels a man is possessed, whereas in feoffments, gifts in tail, and leases for life, he is described as seised." Noy Max. 64; see Savigny, § 8, p. 67; and for a classification of "possessions," see 1 Benth. Works 451 et seq. See ENJOYMENT; QUASI-POSSESSION.

POSSESSION, (defined). 1 Cal. 255, 262; 87 Ill. 148; 25 Barb. (N. Y.) 54; 10 Bosw. (N. Y.) 505.

— (what constitutes). 4 Bibb (Ky.) 559, 563; 2 Dana (Ky.) 127, 148, 149; 4 T. B. Mon. (Ky.) 442; 8 Johns. (N. Y.) 464; 1 Ired. (N. C.) L. 535.

— (what is not). 2 Dana (Ky.) 271; 3 Johns. (N. Y.) 388.

— (how proved). 3 Stark. Ev. 1190.

— (is an interest in lands). 7 Johns. (N. Y.) 205.

— (presumption of grant from). 10 Ired. (N. C.) L. 516.

— (in a contract). L. R. 3 Ch. 61.

— (in a covenant to give). 2 Gr. (N. J.) 461.

— (in statute of limitations). 28 Tex. 560.

POSSESSION, ACTUAL, (what constitutes). 61 Ill. 106; 3 Litt. (Ky.) 19, 20; 4 Ired. (N. C.) L. 310; 1 Grant (Pa.) Cas. 150.

— (how may be divested). 2 Dana (Ky.) 354.

— (a deed is not evidence of). 16 Serg. & R. (Pa.) 44.

POSSESSION, ADVERSE, (what is). 9 Pet. (U. S.) 405; 11 Id. 41; 5 Day (Conn.) 181; Penn. (N. J.) 440, 446; 1 Cow. (N. Y.) 605; 5 Id. 92; 4 Johns. (N. Y.) 390; 9 Id. 174; 13 Id. 118; 8 Wend. (N. Y.) 440; 12 Id. 603; 14 Id. 227; 24 Id. 587; 3 Pa. 134; 7 Serg. & R. (Pa.) 134; 10 Ill. 305; 13 Id. 356; 3 Watts (Pa.) 74; 2 Aik. (Vt.) 364.

— (what is not). 5 B. Mon. (Ky.) 458; 5 Wend. (N. Y.) 532; 15 Id. 597; 6 Serg. & R. (Pa.) 21; 15 Vt. 672; 5 Wheel. Am. C. L. 31.

— (how proved). 9 Johns. (N. Y.) 163.

— (is a question of law). 2 Watts (Pa.) 27.
— (is a question for the jury). 8 Pet. (U. S.) 251; 4 Halst. (N. J.) 149; 9 Johns. (N. Y.) 102.

— (residence is not necessary to constitute). 10 Pa. St. 282; 3 Serg. & R. (Pa.) 291.

POSSESSION BY RELATION OF LAW, (defined). 6 Halst. (N. J.) 197.

POSSESSION, CONSTRUCTIVE, (what is essential to). 23 Wend. (N. Y.) 316.

POSSESSION, ESTATE IN, (defined). 19 Mich. 116, 123.

POSSESSION, HAVING IN, (in a statute). 42 Vt. 495, 505.

POSSESSION IN FACT, (defined). 6 Halst. (N. J.) 197.

POSSESSION IN GOOD FAITH, (what is). 15 Am. Dec. 351 n.

Possession is nine-tenths of the law; This adage is not to be taken to be true to the full extent, so as to mean that the person in possession can only be ousted by one whose title is nine times better than his, but it places in a strong light the legal truth that every claimant must succeed by the strength of his own title and not by the weakness of his antagonist's. For instance, if the claimant be able to show a descent from the grantor of the estate, perfect except in one link of the chain, and the man in possession be a perfect stranger, the latter shall keep the estate; and so, also, if the claimant be a natural son of the last owner and adopted by him, and declared by him to be designed as his heir, yet if he die without making a will in his favor, a stranger in possession has a better title.—Wharton.

POSSESSION MONEY.—The fee to which a sheriff's officer is entitled for keeping possession of property under a writ of execution. *Sneary v. Abdy*, 1 Ex. D. 299. See POUNDAGE.

POSSESSION, NATURAL, (distinguished from "civil possession"). 1 Cal. 255, 263.

POSSESSION, NOTORIOUS, (is constructive notice). 6 Serg. & R. (Pa.) 118.

POSSESSION OF COUNTERFEIT COIN, (what is). 11 Iowa 245.

POSSESSION OF GAME, (what is not). 10 East 19.

POSSESSION OF LAND, (what is not). 1 Jones (N. C.) L. 406.

POSSESSION OF STOLEN GOODS.—See POSSESSION, § 4.

POSSESSION OF THE PREMISES, (in a statute). 126 Mass. 146.

POSSESSION, REVERSION OR REMAINDER, (in statute of wills). 3 Marsh. (Ky.) 508.

POSSESSION, SHOULD COME INTO, (in a deed). 3 Bro. Ch. 180.

POSSESSION, TRUE, (distinguished from "actual possession"). 1 Cal. 255, 263.

POSSESSION VAULT TITLE.—In English law, as in most systems of jurisprudence, the fact of possession raises a *prima facie* title or

a presumption of the right of property in the thing possessed; in other words, the possession is as good as the title (about).—*Brown*.

POSSESSION, WRIT OF.—The process of execution in an action of ejectment. A judgment for the recovery, or for the delivery of the possession, of land may be enforced by writ of possession. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment and that the same has not been obeyed. *See* EJECTMENT; HABERE FACIAS POSSESSIONEM.

POSSESSIONS, (in a will). 69 Me. 306.

POSSESSOR.—One who possesses; one who has possession. *See* POSSESSIO; POSSESSION.

POSSESSOR IN GOOD FAITH, (construed). 1 Cal. 255, 273.

POSSESSORY.—That which arises out of or is concerned with possession. Thus, a possessory action, in the days of real actions, was an action to recover the possession of land (*see* DROIT). An action of possession is a different thing. As to possessory liens, *see* LIEN, § 4.

POSSESSORY JUDGMENT.—In the Scotch law, a judgment which entitles a person who has uninterruptedly been in possession for seven years, to continue in possession until the question of right be decided in due course of law.—*Bell Dict.*

POSSIBILITAS.—An act willfully done, as *impossibilitas* is a thing done against the will.

Possibilitas post dissolutionem executionis nunquam reviviscatur (1 Rolle 321): Possibility is never revived after the dissolution of the execution.

POSSIBILITY.—

§ 1. **Bare**—Coupled with an interest.—A future event, the happening of which is uncertain. In the law of real property, the term also signifies an interest in land which depends on the happening of such an event. In this sense a possibility is said to be either bare or coupled with an interest. Thus, in England, the

expectation of an eldest son of succeeding to his father's land is a bare possibility, which is not recognized by law as being capable of transfer, though it may form the subject of a covenant to settle after-acquired property. If land is conveyed to A. for life, and if C. should be living at his death, then to B. in fee, B.'s contingent remainder is a possibility coupled with an interest; such a possibility may be devised by will or conveyed by deed. 1 Steph. Com. 229; Wms. Real Prop. 279. When an estate in fee-simple conditional at the common law is created, the donor has what is called a "possibility of reverter," as to which *see* REVERTER.

§ 2. **Common or near—Double or remote**—Possibility on possibility.—In the old books a distinction is drawn between (1) a common or near possibility, and (2) a double or remote possibility, or possibility on a possibility. Thus, the chance that a man and a woman, both married to different persons, shall themselves marry one another, is a common possibility, and, therefore, a gift to two such persons, and the heirs of their two bodies, give them an estate tail; but "if land is given to a man and two women and the heirs of their bodies begotten, in this case they have a joyn't estate for life and every of them a severall inheritance, because they cannot have one issue of their bodies, neither shall there be by any construction a possibility upon a possibility, viz., that he shall marry the one first and then the other." Co. Litt. 25b, 184a; Wms. Real Prop. 275; Wms. Seis. 124. *See, further*, as to the effect of a gift of this kind, under titles ESTATE TAIL, § 4; INHERITANCE, § 5.

§ 3. Formerly, also, there was a rule that a contingent remainder could not be created to take effect on the happening of a double possibility. But this is now obsolete. Wms. Real Prop. 275. *See* TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINGUISH.

POSSIBILITY COUPLED WITH AN INTEREST.—*See* POSSIBILITY, § 1.

POSSIBILITY ON A POSSIBILITY.—*See* POSSIBILITY, § 2.

POSSIBLE TO SEE, (in a statute). 19 Mich. 482, 505.

POST.—A conveyance for letters or dispatches. The word is derived from *positi*, the horses carrying the letters or dispatches being kept or placed at fixed stations. The word is also applied to the person who conveys the letters to the houses where he takes up and lays down his charge, and to the stages or distances between house and house. Hence the phrases, post-boy, post-man, post-horse, post-house, &c.

POST.—After; afterwards. Thus, occurring in a report or a text-book, *post* is used to send the reader to a subsequent part of the book.

POST, ACTIONS IN THE.—See WRIT OF ENTRY.

POST AND PER.—See PER AND POST.

POST CONQUESTUM.—After the Conquest. Words inserted in the king's title by King Edward I., and constantly used in the time of Edward III.—*Tomlins*.

POST, CONTRACTS BY.—See LETTER.

POST-DATED.—Dated ahead. An instrument dated after the true time at which it is made, is said to be post-dated. It is now settled that, in general, a bill or note may be post-dated. (See *Bytes Bills* (11 edit.) 78.) A check may also be post-dated. *Bytes* 17.

POST DIEM.—After the day. A plea of payment *post diem*, is a plea that the money was paid after the day it became due.

POST DISSEISIN.—See DE POST DISSEISINA.

POST ENTRY.—When goods are weighed or measured, and the merchant has got an account thereof at the custom house, and finds his entry already made too small, he must make a post or additional entry for the surplusage, in the same manner as the first was done. As a merchant is always in time, prior to the clearing of the vessel, to make his post, he should take care not to over-enter, to avoid as well the advance as the trouble of getting back the overplus.—*McCull. Dict.*

Post executionem status lex non patitur possibilitatem (3 Bulst. 108): After the execution of the estate the law suffers not a possibility.

POST FACTO.—See EX POST FACTO.

POST-FINE.—A duty formerly paid to the king for a fine acknowledged in his court; it

was paid by the cognisee after the fine was fully passed. See FINE.

POST LITEM MOTAM.—See LIS MOTA.

POST-MAN.—"In the Court of Exchequer, two barristers, called the 'post-man' and the 'tub-man' (from the places in which they sit), have a precedence in motions." (See *R. v. Bishop of Exeter*, 7 Mees. & W. 188; 3 Steph. Com. 274 n.) This right of pre-audience would seem not to have been abolished by the merger of the Court of Exchequer into the Queen's Bench Division of the High Court (*q.v.*), the judges having intimated that whenever a divisional court might be sitting in the old Court of Exchequer, the tub-man would be permitted to retain his right of precedence. Sol. J., 11th June, 1881.

POST-MARK.—A stamp or mark put upon letters in the post-office. Such mark is evidence of a letter's having passed through the post-office.

POST-MARK, (how proved). 5 Bing. 299.

POST-MORTEM.—After death, as a *post-mortem* or necroscopic examination. See CORONER.

POST-NATI.—See ANTE-NATUS; CALVIN'S CASE.

POST-NOTE.—A bank-note, intended to be transmitted to a distant place by the public mail, and made payable to order; differing in this from a common bank-note, which is payable to the bearer.

POST-NOTES, (defined). 22 Pa. St. 479, 488.

POST-NUPTIAL SETTLEMENT.—A settlement made after marriage; it is generally deemed voluntary unless made pursuant to written articles entered into before the marriage. See 2 Steph. Com. (7 edit.) 275.

POST-OBIT BOND.—A bond, conditioned to be void on the payment by the obligor of a sum of money upon the death of another person. In most cases the person upon whose death it is so payable is one from whom the obligor expects to derive some property. *Post-obit* bonds, and other securities of a like nature, are set aside, when made by heirs and expectants, as frauds upon the parents and other ancestors, unless the obligee or person dealing with such heir can prove satisfactorily that the stipulated payment is not

more than a just indemnity for the hazard. Even the sale of a *post-obit* bond at public auction will not necessarily give it validity, or free it from the imputation of being obtained under the pressure of necessity.

POST-OFFICE.—An office for the receipt and delivery of the mail.—*Bouvier*.

POST-OFFICE, (what constitutes). 2 Blatchf. (U. S.) 108.

POST-OFFICE DEPARTMENT.—That one of the executive departments of the United States government which is charged with the business of receiving and transporting the mails.

POST-OFFICE ORDER.—A letter of credit furnished by the government, at a small charge, to facilitate the transmission of money.

POST-OFFICE SAVINGS BANKS.—These banks were established, in England, by the Stat. 9 Geo. IV. c. 92, and are now regulated partly by that statute and other statutes, but principally by the Stat. 24 and 25 Vict. c. 14, by which latter act the guarantee of the State is given to the savings depositor for any deficiency in the post-office fund, and a rate of two and a half per cent. per annum was fixed as interest on the amount of the deposits. There have been two more recent statutes bearing upon the subject, viz., 26 and 27 Vict. c. 14, and 37 and 38 Vict. c. 73, and by the former of these two acts certain private savings banks (commonly called "trustee savings banks") may, upon their closing, be (in effect) merged in the post-office savings banks.—*Brown*.

POST-ROAD, or ROUTE.—A road, or route, designated by law to be pursued by contractors and others in the transportation of the mails.

POST-ROAD, (distinguished from "post-route"). 13 Ct. of Cl. 199.

POST-TERMINAL SITTINGS.—Sittings after term. See *SITTINGS*.

POST TERMINUM.—After the term.

POSTE-VERE.—To come after.

POSTAGE.—The duty or charge imposed on letters or parcels conveyed by post.

POSTAGE STAMP.—An engraved and printed ticket furnished by the government to be affixed to mailable matter, in order to entitle such matter to transmission.

POSTAL.—Relating to the mails; pertaining to the post-office.

POSTAL CONVENTION.—A treaty made at Berne, in October, 1874, for the regulation of rates of postage and other matters connected with the post-office, between England and various other countries. See 38 and 39 Vict. c. 23.

POSTAL MONEY-ORDER.—See *POST-OFFICE ORDER*.

POSTEA.—In the common law practice, a formal statement, indorsed on the *Nisi Prius* record, which gives an account of the proceedings at the trial of the action. Sm. Ac. 167.

Posteriora derogant prioribus: Things subsequent supersede things prior.

POSTERITY.—This is a word of comparison and relation in tenure, the correlative of which is the word "priority." Thus, a man who held lands or tenements of two lords was said to hold of his more ancient lord by priority, and of his less ancient lord by posterity. (O. N. B. 94.) But the word has also a more general application in law, and is used as opposed to priority generally.—*Brown*.

POSTERITY.—Succeeding generations; descendants, opposed to *ancestry*.

POSTERITY, (defined). 8 Bush (Ky.) 525.

POSTHUMOUS.—See *IN VENTRE SA MERE*, § 1.

POSTLIMINIUM.—The name given to the rule of international law by which, in certain cases, persons or property captured by an enemy revert to their original owner, when recaptured from the enemy by individuals belonging to the nation from which they were captured. To what cases the rule is applicable depends to a great extent on the practice of each particular nation; for it properly belongs to private international law, though the term *postliminium* is also said to apply to those cases where captured property has come into the hands of neutrals, and is reclaimed by the belligerent from whom it was taken. (Man. Int. Law 190. "*Dictum est autem postliminium a limine et post . . . quia eodem limine re-vertebatur, quo amissus erat.*" 1 Just. Inst. xii. § 5; Dig. xlix. 15.) As to the English law on the subject, see *RECAPTURE*; *JUS POST LIMINII*.

Postliminium fingit eum qui captus est in civitate semper fuisse: Postliminy supposes that he who was taken prisoner had always been in the State.

POSTLIMINY.—See **POSTLIMINIUM**.

POSTMASTER.—An officer appointed by the president to take charge of a post-office, and attend to the receipt, forwarding and delivery of letters and other matter passing through the mail.

POSTMASTER-GENERAL.—The head of the post-office department. He is one of the president's cabinet. See **CABINET**.

POSTPONEMENT, (what is not). 13 How. (N. Y.) Pr. 89.

POSTPONEMENT OF TRIAL.—May be applied for on sufficient grounds, which must appear by affidavit. Such grounds are the absence of an important witness, who can be expected to be produced in a short time, or a state of public feeling in the present which will prevent either party having a fair trial. The postponement should be applied for before the other side has time to try, and will be allowed upon such terms as the court thinks fit. It is a ground for a new trial if a judge improperly refuse to put off a trial. See **CONTINUANCE**.

POSTREMO GENITURE.—Borough-English (*q. v.*)

POSTULATIO.—In the civil law, the first act in a criminal proceeding.

POSTULATIO ACTIONIS.—In the Roman law, the demand of an action; the request made to the prætor by an actor or plaintiff, for an action, or formula of suit; corresponding with the application for a writ in old English practice.—*Burrill*.

POSTULATION.—A petition. Formerly, on the occasion of a bishop being translated from one bishopric to another, he was not elected to the new see, for the rule of the canon law was *electus non potest elegi*; and the pretense was that he was married to the first church, which marriage could not be dissolved but by the pope, and thereupon he (sc. the pope) was petitioned, and consenting to the petition, the bishop was translated, and this was said to be by postulation; but this was restrained by 16 Rich. 11. c. 5.—*Cowell; Tomlins*.

POTENTIA.—Possibility; power.

Potentia debet sequi justitiam, non antecedere (3 Bulst. 199): Power ought to follow justice, not go before it.

Potentia est duplex, remota et propinqua; et potentia remotissima et vana est quæ nunquam venit in actum (11 Co. 51): Possibility is of two kinds, remote and near; that which never comes into action is a power the most remote and vain.

Potentia inutilis frustra est (Branch Pr.): Useless power is of no avail.

POTENTIA PROPINQUA.—Common possibility. See **POSSIBILITY**, § 2.

Potest quis renunciare pro se, et suis, juri quod pro se introductum est (Bract. 20): One may relinquish for himself and his heirs, a right which was introduced for his own benefit.

POTESTAS.—Power; authority; dominion.

Potestas stricte interpretatur (Jenk. Cent. 17, *marg.*): A power is to be strictly interpreted.

Potestas suprema seipsam dissolvere potest, ligare non potest (Bac. Max. 19): The supreme power may loose, but cannot bind, itself.

POTHIER.—Robert Joseph Pothier was born on January 9th, 1699, at Orleans, where he afterwards became professor; he died on March 2d, 1772. He wrote *Pandectæ Justinianæ in Novum Ordinem Digestæ*, and treatises on many important branches of private law; they enjoy considerable reputation. Complete editions of his works were published in 1820–22, 1825, 1845 and 1861. Holtz. Encycl.

Potior est conditio defendentis: The condition of a defendant is the better. See **IN PARI DELICTO, POTIOR, &c.**

Potior est conditio possidentis: The condition of one possessing is the better. See **POSSESSION IS NINE-TENTHS OF THE LAW**.

POTWALLERS, or POTWALLOPERS.—Persons who cooked their own food, and were on that account in some boroughs entitled to vote for members of parliament. See 2 Steph. Com. (7 edit.) 360.

POUND.—OLD ENGLISH: *pont-fold, pynfold*; from Anglo-Saxon, *pyndan*, to shut in. Muller's Etym. Wortb. *vv. Pynfold Pound*. See **POUND-BREAK**.

§ 1. A pound is a building or piece of land where goods which have been seised as distress, or cattle taken up as estrays or damage feasant, are placed by the dis-

trainor or captor; as soon as this has been done the goods or cattle are in the custody of the law. Co. Litt. 47b. See **RESCUE**;
POUND-BREACH.

§ 2. **Overt—Common—Special**.—In English law, a pound is either overt (open) or covert (close). A pound overt is practically only used for cattle, and may be either a common pound overt, which is a pinfold or structure of wood made for such purposes on a public piece of land, (generally on the waste of a manor, and hence formerly called "the lord's pound."—*Blount, s. v.*), or a special pound overt, which is where the cattle were impounded on the land where the distress was made, (made lawful by Stat. 11 Geo. II. c. 19, § 10,) or on that of the distrainer, or of some other person by his consent, in which two latter cases the distrainer must give notice to the owner of the cattle, because where cattle are impounded in a pound overt their owner is bound to supply them with food and drink. A pound overt is so called, either because it is open overhead (3 Bl. Com. 12, which seems to be the true reason), or because the owner of the cattle may go to it wherever it is, without being liable for a trespass. Co. Litt. 47b.

§ 3. **Covert, or close**.—A pound covert or close, is where the distrainer impounds the cattle or goods in some part of a house (*e. g.* a stable), and then he is bound to supply the cattle with food and drink. Goods which are liable to be damaged by the weather or stolen, must always be impounded in a pound covert. *Ib.*

§ 4. Formerly a distrainer could not impound the distress on the land of the tenant, but had to remove it. Now, however, the distrainer may convert any part of the premises, upon which a distress is taken, into a pound *pro hac vice*. Stat. 11 Geo. II. c. 19.

POUND.—A certain weight, consisting in troy weight, of twelve, in avoirdupois, sixteen ounces; the sum of twenty shillings, so called because in Saxon times two hundred and forty pence weighed a pound. See *Lambard 219, voc "Libra."*

POUND, (defined). 36 Vt. 341; 3 Bl. Com. 12.

POUND OF LAND.—An uncertain quantity of land, said to be about fifty-two acres.

POUNDAGE.—A fee payable to an officer of a court, or to the public revenue, in respect of services performed by him; it is so called because it was originally (and is still in England) calculated at so much for every pound sterling of the amount with which he has to deal. Thus, a sheriff, on executing a *fi. fa.*, is entitled to a poundage of one shilling in the pound if the sum levied does not exceed £100, and sixpence in the pound above that sum.

Stat. 28 Eliz. c. 4; Arch. Pr. 541. This is in addition to his fees on the warrant, &c. *Id.* 1483; *Mortimer v. Cragg*, 3 C. P. D. 216; *Bissicks v. Bath Colliery Co.*, 3 Ex. D. 774.

POUNDAGE, (on execution). 63 How. (N. Y.) Pr. 168.

POUND-BREACH.—**ANGLO-SAXON**: *pundbreche, i. e. "infrastructura parci."* Leg. Hen Primi c. 40; Schmid, *Ges. der Ang. glossary*, from which it seems that this is the only instance of the word occurring in Anglo-Saxon records. It occurs in *Britt.* (72a) under the form of *poundbreche*.

The act of taking goods out of a pound before the distrainer's claim has been satisfied, and that whether the distress was lawfully made or not, because impounded goods are in the custody of the law. The distrainer's remedy is either by action for treble damages, or by proceedings for a penalty before justices. Co. Litt. 47b; 3 Bl. Com. 12, 146; *Stats. 2 W. & M.* (sess. 1) c. 5; 6 and 7 Vict. c. 30. See **DOUBLE DAMAGES**; **RESCUE**.

POUND-KEEPER.—An officer charged with the care of a pound, and of animals confined there.

POUNDS STERLING, (in an affidavit). 4 Barn. & C. 886.

POUR FAIRE PROCLAIMER.—An ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, &c. F. N. B. 176.

POUR SEISIR TERRES.—An ancient writ whereby the crown seized the land which the wife of its deceased tenant, who held *in capite*, had for her dower, if she married without leave; it was grounded on the statute *De Prærogativa Regis* 7. 17 Edw. II. st. 1, c. 4. It is abolished by 12 Car. II. c. 24.

POURPARTY.—To divide the lands which fall to parceners. O. N. B. 11.

POURPRESTURE.—Anything done to the nuisance or hurt of the public demesnes, or the highways, &c., by enclosure or building, endeavoring to make that private which ought to be public. The difference between a *pourpresture* and a public nuisance is that *pourpresture* is an invasion of the *jus privatum* of the crown; but where the *jus publicum* is violated, it is a nuisance. Skene makes three sorts of this offense: (1) Against the crown; (2) against the lord of the fee; (3) against a neighbor. 2 Inst. 38; 1 Reeves Hist. Eng. Law 160.

POURSUIVANT.—A king's messenger. Those employed in martial causes were called "poursuivants-at-arms." There are at present, in the Herald's Office, four pursuivants, distin-

guished by the names following: (1) *Rouge Croix*.—Instituted at an uncertain period, but generally considered to be the most ancient. The title was doubtless derived from the cross of St. George. (2) *Blue Mantle*.—An office instituted by Edward III. or Henry V., and named either in allusion to the color of the arms of France or to that of the robes of the Order of the Garter. (3) *Rouge Dragon*.—This poursuivancy was founded by Henry VII. on the day before his coronation, the name being derived from the ensign of his ancestor, Cadwaladr. He also assumed a red dragon as the dexter supporter of his arms. (4) *Portcullis*.—This office was instituted by the same monarch, from one of whose badges the title was derived.

As to the office of poursuivant of the Great Seal, see 37 and 38 Vict. c. 81.—*Wharton*.

POURVEYANCE, or PURVEYANCE.—The providing necessities for the sovereign, by buying them at an appraised valuation in preference to all others, and even without the owner's consent. Indeed it was a royal right of spoil, and was long since abolished. 12 Car. II. c. 24; 3 Hall. Middle Ages c. viii. pt. 3, p. 148; 1 Hall. Const. Hist. c. vi. 304.

POURVEYOR, or PURVEYOR.—A buyer; one who provided for the royal household.

POWER.—

§ 1. Power is sometimes used in the same sense as "right," as when we speak of the powers of user and disposition which the owner of property has over it, but strictly speaking a power is that which creates a special or exceptional right, or enables a person to do something which he could not otherwise do.

Powers are either public or private.

§ 2. **Public powers.**—Public powers are those conferred by the sovereign, by the legislature (parliamentary powers), or by a delegate of the sovereign or legislature for a public purpose, *e. g.* the construction of a railway. When a parliamentary power authorizes acts by which the rights of private persons may be affected against their will, it is called a "compulsory power;" such are the powers given to railway companies for the compulsory purchase of land required for their undertakings. See **EMINENT DOMAIN**.

§ 3. **Private.**—Private powers are those conferred on private persons. Some are created by the parties themselves, in which case the person conferring the power is called the "donor," and the person to whom it is given the "donee;" others are statutory, *i. e.* conferred by statute.

§ 4. **Mere powers—Powers in the nature of trusts.**—Powers must be distinguished from trusts: "Powers are never imperative—they leave the act to be done at the will of the party to whom they are given. Trusts are always imperative." (*Att.-Gen. v. Lady Downing*, Wilm. 23.) Powers are, however, sometimes divided into (1) mere, bare or naked powers (or powers in the proper sense of the word), and (2) powers coupled with a trust, or powers in the nature of trusts, which the donees are bound to exercise; they are, therefore, really trusts and powers only in form. *Brown v. Higgs*, 8 Ves. 570, cited in *Lew. Trusts* 428; *Sugd. Pow.* 588; *Co. Litt.* 236a.

§ 5. **General—Special.**—Powers are of two principal kinds, viz.: (1) those which are by law incident to an office (sometimes called "general powers"), such as the ordinary powers of directors, guardians, executors, trustees, &c.; and (2) those conferred specially (special powers), such as a power of sale or leasing, or an authority conferred by a power of attorney, procuration, warrant, &c. (*Lew. Trusts* 414.) Special powers are of infinite variety, but for practical purposes they may be divided into those which enable the donees to create or modify estates or interests in property (called in conveyancing "powers" *par excellence*), and those conferred for other purposes.

§ 6. **Powers of creating estates, &c.**—Powers which enable the donees to create or modify estates or interests in property "confer the right of alienation as opposed to that of enjoyment" (*Burt. Comp.* § 173); *i. e.* the power enables the donee to declare in whom and in what manner the property is to vest, but gives him (*quâ donee*) no right of ownership over it. Such a power is said to be legal when it operates upon or passes the legal estate in the property, and equitable when it only operates on or passes a beneficial or equitable estate or interest. *Sugd. Pow.* 45.

§ 7. **Legal: by use.**—Legal powers (which are confined to land) operate either under the Statute of Uses, under the Statute of Wills, or by custom. Powers under the Statute of Uses operate in the following manner: If land is conveyed to A. and his heirs (A. is sometimes called

(especially in the case of settlements) the "trustee of the power." *Elph. Conv.* 328,) to such uses as B shall appoint, and B. appoints or declares the uses to C. for life, and after C.'s death to himself in fee, then the legal estate passes to C. for his life with remainder to B., as if the estates had been originally so conveyed to them. *See APPOINTMENT*, § 1; *USE*.

§ 8. — **by will.**—Powers operating under the Statute of Wills are similar to those operating by way of use, except that they can be created and take effect with greater freedom; thus, if a testator directs his executors to sell his land, without devising it to them, a sale by them operates as the execution of a power to dispose of the land, although they have no ownership in it, and the purchaser takes as devisee under the will. *Wms. Real Prop.* 314. *See EXECUTORY INTEREST*.

§ 9 — **by custom.**—Powers operating by virtue of a custom (*e. g.* a custom applicable to copyholds) resemble those under the Statute of Uses in their effect, but they are less flexible in their application. *Chance Pow.* 3, 27.

§ 10. **Appendant, or appurtenant—In gross, or collateral—Merely collateral, or naked.**—Legal powers are (1) "appendant" or "appurtenant" when the donee has an estate in the land and the power is to take effect wholly or in part out of that estate, as in the case of a tenant for life having a power of leasing, or a mortgagee having a power of sale; (2) "in gross" or "collateral," either (a) where the donee has an estate in the land, but the power does not take effect out of it, as where a tenant for life has power to appoint an estate to commence after his death, or (b) where the donee has no present estate, but may exercise the power for his own benefit; (3) "merely collateral" or "naked," where the donee neither has an estate nor can exercise the power for his own benefit, as in the case of executors having a mere power of sale. If lands are devised to an executor with a trust or power of sale, this is sometimes called a "power coupled with an interest," to distinguish it from a bare or naked power. (*Co. Litt.* 113a.) This classification of powers is of importance with reference to the ability of the donee to release, suspend

or extinguish the power. Thus, executors who have a merely collateral power to sell land cannot release or extinguish it. *Sudg. Pow.* 46 *et seq.*, 906; *Co. Litt.* 265b, 287a; *Wats. Comp. Eq.* 758.

§ 11. **Equitable.**—Equitable powers are analogous to legal powers. Thus, if land or stock is vested in trustees upon such trusts as B. shall appoint, and B. appoints it to C., the legal ownership of the land or stock remains in the trustees, but the equitable ownership passes to C., and he can compel the trustees to convey the land or transfer the stock to him. *Wms. Pers. Prop.* 319.

§ 12. **Revocation, or appointment—Primary, or subsidiary.**—Powers are also divisible into (1) powers of revocation, which give only the right of revoking existing estates, and (2) powers of appointment, which enable the donees to create or appoint new estates. When a power of appointment is not preceded by an existing estate, it is sometimes called a "primary power;" when it is preceded by an existing estate which the donee may revoke, it is called a "power of revocation and new appointment," or a "subsidiary power." (*Wats. Comp. Eq.* 759; *Leake P. L.* 374.) As to the operation of appointments with reference to the rule against perpetuities, *see APPOINTMENT*, § 1.

§ 13. **General.**—Powers are either general [absolute] or limited. A general power enables the donee to appoint the property to any person or persons (including himself), for any estates, and on any conditions, and is therefore equivalent to ownership. (*Sugd. Pow.* 394.) If he dies having exercised it by will in favor of a volunteer, or if he becomes bankrupt, the power forms part of his assets for payment of his debts. (*Wms. Sett.* 40.) In the case of a person dying after having exercised a general power by his will, the doctrine is, that by exercising it he is in ordinary cases presumed to have meant to take the property out of the instrument creating the power for all purposes, so as to make it form part of his estate; and therefore if the appointment fails (*e. g.* by the appointee dying in the appointor's life-time), the property results to the appointor's estate, and not to that of the donor of the power. If, however, the donee only exercises the power

partially, so that he does not appear to have intended to make the property part of his estate for all purposes, then if the appointment fails the property results to the donor of the power. (*See In re Van Hagen*, 16 Ch. D. 18.) An analogous rule prevails in cases of conversion (*see* that title, § 5). *See* ADMINISTRATION, § 2.

§ 14. **Limited: Special.**—A limited power is either special or particular. A special power is one which is restricted as to the nature or duration of the estates or interests to be created under it, as in the case of a power to grant leases by appointment for certain terms frequently given to the tenant for life under a settlement.

§ 15. **Particular.**—A particular power is one which is restricted as to its objects or the persons in whose favor it may be exercised, as in the case of a power to appoint property among a certain class only (*e. g.* the children of the donee); but the terms "special" and "particular" are frequently used as synonymous. *Wms. Real Prop.* 306 *et seq.*; *Sugd. Pow.* 394.

§ 16. **Distributive—Exclusive—Mixed.**—When a power of appointment among a class requires that each shall have a share, it is called a "distributive" or "non-exclusive" power; when it authorizes, but does not direct, a selection of one or more to the exclusion of the others, it is called an "exclusive power," and is also distributive; when it gives the power of appointing to a certain number of the class, but not to all, it is exclusive only, and not distributive. (*Leake* 389.) A power authorizing the donee either to give the whole to one of a class, or to give it equally amongst such of them as he may select (but not to give one a larger share than the others), is called a "mixed power." (*Sugd.* 448.) Formerly, if the donee of a non-exclusive power excluded one of the objects from his appointment, or only gave him an illusory share, the appointment was held void; but this rule has been abolished. (*See* APPOINTMENT, § 3.) As to frauds on powers, *see* FRAUD, § 13.

§ 17. **Miscellaneous powers.**—Powers not given for the purpose of creating or modifying estates or interests in property are of great variety. In most cases their names explain themselves. Thus, a power of appointing new trustees is incident to

every modern settlement created by will or deed, either by express provision or by statutory enactment. So a power of distress and entry may be inserted in a deed to enable the donee to enter and distrain on certain land of the donor, to enforce the performance of some covenant, *e. g.* the payment of an annuity. *See* DISTRESS, § 8. For other examples of powers, *see* POWER OF ATTORNEY.

POWER OF APPOINTMENT.—*See* POWER, § 6 *et seq.*

POWER OF ATTORNEY.—

§ 1. A formal instrument by which one person empowers another to represent him, or act in his stead for certain purposes. A power of attorney is usually a special instrument in the form of a deed poll, but it may form part of a deed containing other matter. Thus, a deed of dissolution of partnership often contains a power of attorney from the retiring to the continuing partner, to enable the latter to wind up the business and collect the assets. A power which authorizes the execution of a deed must itself be conferred by deed. *Stokes Pow. of Att.*; 1 *Dav. Prec. Conv.* 475 *n.*

§ 2 The donor of the power is called the "principal" or "constituent;" the donee is called the "attorney."

§ 3 **General, special—Limited, unlimited.**—A power of attorney which authorizes the attorney to do all acts of a certain class from time to time, such as to carry on a business, collect debts, &c., is sometimes called a "general power;" as opposed to a special or particular power, or one which is confined to a specified act or acts. A limited power is one containing precise instructions as to the mode of executing it, while an unlimited power leaves this to the discretion of the attorney. *See* *May Parl. L.* 799 *et seq.*

§ 4. As to the persons who can empower others to act for them by power of attorney, *see* AGENT; AUTHORITY; DELEGATUS NON POTEST DELEGARE; MINISTERIAL. As to the cases in which a power of attorney is revocable, *see* AUTHORITY, § 4; REVOCATION. By Stat. 22 and 23 Vict. c. 35, a trustee, executor or administrator making any payment or doing any act *bonâ fide* in pursuance of a power of attorney, in igno-

rance of the death of the person who gave the power, or of his having done some act to avoid it, is not liable for the money so paid or the act so done. Similar statutory provisions exist in many if not all of the States.

§ 5. The English Conveyancing Act, 1881, contains the following provisions in regard to powers of attorney. The donee of a power of attorney may act in and with his own name, signature and seal instead of the name, signature and seal of the donor. (§ 46.) Any person making or doing any payment or act in good faith, in pursuance of a power of attorney, is not to be liable by reason that the donor of the power had previously died, or become lunatic, or bankrupt, or revoked the power, provided such fact was not known to him at the time. (§ 47.) A power of attorney may be deposited in the central office of the Supreme Court, on its execution being verified by affidavit or otherwise. The file of powers so deposited may be searched, and an office copy of any power obtained, by any person on payment of the office fees. An office copy is sufficient evidence of the contents of the original instrument. (§ 48.) A married woman, whether an infant or not, is to have power, as if she were unmarried and of full age, to appoint an attorney on her behalf to do anything which she herself might do. § 40.

POWER OF ATTORNEY, (implies a power under seal). 8 Pick. (Mass.) 490.

POWERS, (in a statute). 12 Pet. (U. S.) 636.

POWERS, OTHER PROPER AND REASONABLE, (in a will). 6 Sim. 152.

POYNDING.—See POINDING.

POYNINGS' LAW, or STATUTE OF DROGHEDA.—An act of parliament made in Ireland, 10 Hen. VII. c. 22, A. D. 1495; so called because Sir Edward Poynings was lieutenant there when it was made, whereby all general statutes before then made in England were declared of force in Ireland, which, before that time, they were not. (12 Co. 109; 3 Hall. Const. Hist. c. xviii. 361; 1 Br. & H. Com. 112.)—Wharton.

PRACTICE.—The law of practice or procedure is that which regulates the formal steps in an action or other judicial proceeding. It therefore deals with writs of summons, pleadings, affidavits, notices, summonses, motions, petitions, orders, trial, judgment, appeals, costs and execution. In jurisprudence it forms part of adjective law. See LAW, § 8.

PRACTICABLE, (defined). 43 Ill. 155.

— (not synonymous with "possible"). 54 Tex. 294.

PRACTICAL LOCATION, (identical with "actual location"). 47 Barb. (N. Y.) 287.

PRACTICE, (to what relates). 12 How. (N. Y.) Pr. 158.

PRACTICE COURT, QUEEN'S BENCH.—A court attached to the Court of Queen's Bench, and presided over by one of the judges of that court, in which points of practice and pleading were discussed and decided. If any doubt arose in the mind of the presiding judge as to any question brought before him, he referred the party to the full court. See BAIL COURT.

PRACTICING AS AN APOTHECARY, (in a statute). 1 Car. & P. 538; 1 Dowl. & Ry. 564.

PRACTITIONER.—He who is engaged in the exercise or employment of any art or profession.

PRÆCEPTIONEM, LEGATUM PER.—See LEGATORUM, GENERA QUATUOR.

PRÆCEPTORIES.—A kind of benefices, so called because they were possessed by the more eminent templars, whom the chief master by his authority created and called *præceptores templi*. 2 Mon. Angl. 543.

PRÆCIPE.—

§ 1. In the practice of the English High Court, a *præcipe* is a slip of paper on which a party to a proceeding writes the particulars of a document which he wishes to have prepared or issued; he then hands it to the officer of the court whose duty it is to prepare or issue the document. Thus, when a party wishes to issue a writ of execution, he must file a *præcipe* containing the title of the action, the reference to the record, the date of the judgment, and the name of the party against whom the execution is to be issued. Rules of Court, xlii. 10 (rule 17 of June, 1876).

§ 2. In admiralty actions, *præcipes* are longer and more important than in other actions. See the forms; Rose. Adm. Pr. clxxxix. *et seq.*; Wins. & B. Adm. Pr. 186, xlvii.

§ 3. Formerly a *præcipe* was a species of original writ, so called because it required the sheriff to command the defendant either to do a certain thing, or to show cause why he had not done it (3 Bl. Com. 274); e. g. the *præcipe quod reddat*, commanding the defendant to give up land to the demandant (Co. Litt. 101 a), which was the writ by which a common recovery was commenced against the tenant of the freehold. In order to have a recovery with double voucher to bar an entail, it was usual for the tenant in tail to convey an estate of freehold to a friend, against whom the *præcipe* was brought; this was called making a tenant to the *præcipe*. 1 Steph. Com. 569. See RECOVERY; VOUCHER.

§ 4. The instructions for issuing an original writ consisted of a copy of the writ required, and therefore began with the word *præcipe* (Tidd 105; Lee Dict. 880); hence probably the use of the word in its modern sense.

PRÆCIPE IN CAPITE.—A writ out of Chancery for a tenant holding of the crown *in capite*, viz., in chief.—Mag. Char. c. 24.

PRÆCIPE QUOD REDDAT.—The form of a writ, which extended as well to a writ

of right as to other writs of entry or possession, beginning, "*Præcipe A., quod reddat B. unum messagium,*" &c.—*O. N. B.* 13.

PRÆCIPE QUOD TENEAT CONVENTIONEM.—The writ which commenced the action of covenant in fines, which are abolished by 3 and 4 Wm. IV. c. 74.

PRÆCIPE, TENANT TO THE.—See **PRÆCIPE**, § 3.

PRÆCIPE, WRIT OF.—See **PRÆCIPE**, § 3.

PRÆCIPITUM.—The punishment of casting headlong from some high place.

PRÆCIPUT CONVENTIONNEL.—In the French law, under the *régime en communauté*, when that is of the conventional kind, if the survivor of husband and wife is entitled to take any portion of the common property by a paramount title and before partition thereof, this right is called by the somewhat barbarous title of the conventional *præciput*, from *præ*, before, and *capere*, to take.—*Brown*.

PRÆCOGNITA.—Things to be previously known in order to the understanding of something which follows.

PRÆDA BELLII.—Booty; property seized in war.

PRÆDIA STIPENDIARIA.—In the civil law, provincial lands belonging to the people.

PRÆDIA TRIBUTARIA.—In the civil law, provincial lands belonging to the emperor.

PRÆDIA VOLANTIA.—In the duchy of Brabant, certain things movable, such as beds, tables, and other heavy articles of furniture, were ranked among immovables, and were called *prædia volantia*, or volatile estates. 2 Bl. Com. 428.

PRÆDIAL TITHES.—Such as arise merely and immediately from the ground; as grain of all sorts, hops, hay, wood, fruit, herbs. 2 Bl. Com. 23; 2 Steph. Com. (7 edit.) 722.

PRÆDIOT—PRÆDIOTUS.—Aforesaid. Hob. 6.

PRÆDIUM DOMINANS.—An estate to which a servitude is due; the ruling estate.—*Colquh. Rom. Civ. Law*, § 937.

PRÆDIUM RUSTICUM.—Heritage which is not destined for the use of man's habitation; such, for example, as lands, meadows, orchards, gardens, woods, even though they should be within the boundaries of a city.—*Colquh. Rom. Civ. Law*, § 937.

PRÆDIUM SERVIENS.—An estate which suffers or yields a service to another estate.—*Colquh. Rom. Civ. Law*, § 937.

PRÆDIUM URBANUM.—A building or edifice intended for the habitation and use of man, whether built in cities, or in the country.—*Colquh. Rom. Civ. Law*, § 937.

PRÆFATUS.—Aforesaid. Sometimes abbreviated to *profat.* and *p. fat.* See **PRÆDICT**.

PRÆFECTUS URBI.—He was, from the time of Augustus, an officer who had the superintendence of the city and its police, with jurisdiction extending one hundred miles from the city, and power to decide both civil and criminal cases. As he was considered the direct representative of the emperor, much that previously belonged to the *prætor urbanus* fell gradually into his hands.—*Colquh. Rom. Civ. Law*, § 2395.

PRÆFECTUS VIGILUM.—The chief officer of the night watch. His jurisdiction extended to certain offenses affecting the public peace, and even to larcenies. But he could inflict only slight punishments.—*Colquh. Rom. Civ. Law*, § 2395.

PRÆFECTUS VILLÆ.—The mayor of a town.

PRÆFINE.—The fee paid on suing out the writ of covenant, on levying fines, before the fine was passed. 2 Bl. Com. 350.

PRÆMIUM PUDICITIÆ.—The consideration given by the seducer of a chaste woman for her defilement. 2 P. Wms. 452.

PRÆMUNIRE.—The offense of directly or indirectly asserting the supremacy of the pope over the crown of England, as by procuring excommunications or bulls from Rome. The punishment is for the offender to be put out of the king's protection, to forfeit his lands and goods to the king, and to be imprisoned. The mandatory part of the writ used to enforce the provisions of the acts against *præmunire* began *præmunire facias*, "that you cause [the accused] to be forewarned," hence the name. It is now quite obsolete. Stats. 35 Edw. I.; 16 Rich. II. c. 5; 27 Eliz. c. 2, and many others, cited in 4 Bl. Com. 103 *et seq.*; 4 Steph. Com. 168 *et seq.*; Co. Litt. 129 b, 391 a, and Butler's note.

PRÆNOMEN.—In the civil law, the name of a person, distinguishing him from others of the same family.

PRÆPOSITUS.—An officer next in authority to the alderman of a hundred, called *præpositus regius*; or a steward or bailiff of an estate, answering to the *vicere*.—*Anc. Inst. Eng.* Also, the person from whom descents are traced under the old canons.

PRÆPOSITUS ECCLESIAE.—A church-reeve, or church warden.

PRÆPOSITUS VILLÆ.—A constable of a town, or petty constable.

Præpropera consilia raro sunt prospera (4 Inst. 57): Hasty counsels are rarely prosperous.

Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis (Co. Litt. 113): Prescription is a title by authority of law, deriving its force from use and time.

PRÆSCRIPTIONES.—In the Roman law, forms of words (of a qualifying character) inserted in the formulæ in which the claims in actions were expressed; and as they occupied an early place in the formulæ, they were called by this name, *i. e.* qualifications *preceding* the claim. For example, in an action to recover the arrears of an annuity, the claim was preceded by the words "so far as the annuity is due and unpaid," or words to the like effect ("*cujus rei dies fuit*").—*Brown*.

Præsentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis (Bac. Max. 224): The presence of the body cures error in the name; the truth of the name cures an error of description.

PRÆSTARE.—In the Roman law, *præstare* meant to make good, and when used in conjunction with the words *dare facere oportere* denoted obligations of a personal character, as opposed to real rights.

Præstat cautela quam medela (Co. Litt. 304): Prevention is better than cure. Wherefore, preventive justice is administered by the courts issuing injunctions to prevent the continuance or recurrence of damage.

Præsumatur pro justitia sententiæ: The presumption should be in favor of the justice of a sentence.

PRÆSUMITUR.—It is presumed.

Præsumitur pro legitimatione (5 Co. 98 b): The presumption is in favor of legitimacy.

Præsumitur pro negante: It is presumed for the negative.

The rule of the House of Lords when the numbers are equal on a motion.

PRÆSUMPTIO.—(1) Presumption (*q. v.*); (2) intrusion, or the unlawful taking of anything. Leg. Hen. I. c. 11.

PRÆSUMPTIO FORTIOR.—A strong presumption.

PRÆSUMPTIO HOMINIS.—See PRESUMPTION, § 4.

Præsumptio violenta plena probatio (Co. Litt. 6 b): Strong presumption is full proof.

Præsumptio violenta valet in lege (Jenk. Cent. 56): Strong presumption is valid in law.

PRÆSUMPTIO JURIS ET DE JURE.—See PRESUMPTION, § 2.

PRÆTEXTUS.—In old English law, a pretext; a pretense or color.

Prætextu liciti non debet admitti illicitum (Wing. 728): Under pretext of legality, what is illegal ought not to be admitted.

PRÆTOR.—A municipal officer of Rome, so called because (*præret populo*) he went before or took precedence of the people.—*Bouvier*.

PRÆTOR FIDEI - COMMISSARIUS.—The judge at Rome, who enforced the performance of all fiduciary obligations and confidences. See 1 Steph. Com. (7 edit.) 358.

PRÆVARICATOR.—In the civil law, one who betrays or is unfaithful to his trust. An unfaithful advocate.

PRÆVENTO TERMINO.—A form of action anciently known in the Scotch Court of Sessions, by which a delay to discuss a suspension or advocacy was avoided.—*Bell Dict.*

PRAGMATIC SANCTION.—In the civil law, a rescript or answer of the sovereign, delivered by advice of his council to some college, order, or body of people, who consult him in relation to the affairs of the community. A similar answer given to an individual is simply called a *rescript*.

PRATIQUE.—A license for the master of a ship to traffic in the ports of Italy upon a certificate that the place whence he came is not annoyed with any infectious disease.—*Encycl. Lond.*

PRATUM BOVIS, or CARUCÆ.—A meadow for oxen employed in tillage.

PRAXIS.—Use; practice.

Praxis judicum est interpres legum (Hob. 96): The practice of the judges is the interpreter of the laws.

PRAY IN AID.—A petition made in a court of justice for the calling in of help from another that has an interest in the cause in question.

PRAYER FOR OTHER AND FURTHER RELIEF.—To avoid prejudice from error or deficiency in a prayer for relief, it has been usual for a plaintiff to add to the prayer a clause asking, "or that plaintiff may have such other and further relief as to the court may seem fit," or the like. Under this clause it is considered that the court is not confined, in the decree, to granting precisely the specific relief asked.—*Abbott*.

PRAYER FOR PROCESS.—A prayer or petition with which a bill in

equity concludes, to the effect that a writ of *subpoena* may issue against the defendant to compel him to answer all the matters charged against him in the bill.

PREAMBLE.—The preamble of a legislative bill is that part which contains the recitals showing the necessity for the bill. When a private bill is referred to a select committee, and is opposed on the question of its general expediency, the promoters have to adduce arguments and evidence in support of it; this is called, in England, “proving the preamble.” If it is not proved, the bill is generally rejected by the house. *See* May Parl. L. 799 *et seq.*

PREAMBLE, (of a statute, how construed). 2 Bail. (S. C.) 334; 7 Wheel. Am. C. L. 293; 3 Co. 7; Cowp. 232; 9 East 239; Lofft 783; 8 Mau. & Sel. 66; 3 P. Wms. 434.

— (when admissible as evidence). 4 Mau. & Sel. 532.

— (when restrains the enacting part of a statute). 1 Harr. (N. J.) 285; 13 Ves. 36.

— (when does not restrain the enacting part of a statute). Penn. (N. J.) 224; 1 P. Wms 320; 17 Ves. 508.

— (of a will, how construed). 3 Rand. (Va.) 280; 4 Wheel. Am. C. L. 368.

PRE-APPOINTED EVIDENCE.—

As opposed to *casual* evidence, (*i. e.* evidence left to chance, *i. e.* to the circumstances occurring at the time,) denotes the evidence prescribed beforehand usually by statute for the attestation of certain classes of documents, *e. g.* wills. *See* CASUAL EVIDENCE.

PRE-AUDIENCE.—The right of pre-audience in a court of law is the right which one person has of being heard before another, in business which is not set down to be heard in a particular order, *e. g.* motions. Thus, in England, the attorney-general has precedence of other counsel in most matters, the queen's counsel over junior barristers, &c. A table showing the order of pre-audience is given in 3 Steph. Com. 274 *n.* *See* POSTMAN.

PREBEND.—A stipend granted in cathedral churches; also, but improperly, a prebendary. A simple prebend is merely a revenue; a prebend, with dignity, has some jurisdiction attached to it. The term prebend is generally confounded with canonicate; but there is a difference between them. The former is the stipend granted to an ecclesiastic in consideration of his officiating and serving in the church; whereas the canonicate is a mere title or spiritual quality which may exist independently of any stipend. 2 Steph. Com. (7 edit.) 674 *n.*

PREBENDA, or PROBANDA.—Provisions; provender.

PREBENDARY.—A stipendiary of a cathedral.

PREBENDARY, (defined). 2 Steph. Com. 674 *n.*; 3 *Id.* 14 *n.*

PRECARIÆ, or PRECES.—Dayworks which the tenants of certain manors are bound to give their lords in harvest time. *Magna precariu* was a great or general reaping day.—*Cowell.*

PRECARIOUS, (in a statute). 60 Barb. (N. Y.) 56.

PRECARIOUS LOAN.—*See* PRECARIUM.

PRECARIUM.—A contract by which the owner of a thing, at another's request, gives him the thing to use as long as the owner shall please. This was distinguished from an ordinary gratuitous loan, and in the Roman law gave rise to different obligations on the part of the borrower. *See* Story Bailm. §§ 227, 253 *b.*

PRECATORY TRUST.—A trust created by certain words, which are more like words of entreaty and permission, than of command or certainty. Examples of such words, which the courts have held sufficient to constitute a trust, are “wish and request,” “have fullest confidence,” “heartily beseech,” and the like. At the present day, the courts are not disposed (except under exceptional circumstances) to enlarge the number of such phrases, so as to create a trust. *See* TRUST.

PRECATORY WORDS.—Words of entreaty or request in a will.

PRECE PARTIUM.—On the prayer of the parties. *See* DIES DATUS.

PRECEDENCE, or PRECEDENCY.—The act or state of going before; adjustment of place.

PRECEDENCE, PATENT OF.—A grant from the crown to such barristers as it thinks proper to honor with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents. 3 Steph. Com. (7 edit.) 274.

PRECEDENT.—

§ 1. **Judicial.**—A judicial precedent is a judgment or decision of a court of law cited as an authority for deciding a similar state of facts in the same manner, or on the same principle, or by analogy. The

original rules of common law and equity are contained in precedents established by the courts, *i. e.* they have to be arrived at by ascertaining the principle on which those cases were decided. *See* LAW, § 4; REPORT.

§ 2. **Conveyancing.**—In conveyancing, a precedent is a copy of an instrument, used as a guide in preparing another instrument of a similar description.

PRECEDENT CONDITION.—*See* CONDITION, § 6.

PRECEDENTS SUB SILENTIO.—Silent uniform course of practice, uninterrupted though not supported by legal decisions. 2 Wynne Eunom. (5 edit.) 511.

PRECEPTARIUM.—The continuance of a suit by consent of both parties.—*Cowell*.

PRECEPT.—

§ 1. A precept is an order or direction given by one official person or body to another, and requiring him to do some act within his province.

§ 2. Thus, in England, rates levied by school boards, sanitary authorities, and the like, are collected by the overseers of the respective parishes in accordance with precepts issued to them, (Public Health Act, 1872, § 18; 1875, § 222,) because they, as the collectors of the poor rate, have the materials and machinery available for the collection of other rates.

§ 3. So jurors for the trial of actions in the High Court are summoned by the sheriff under precepts directed to him by the judges. *Sim. Ac.* 121; *Juries Act*, 1870, § 16.

PRECEPT OF CLARE CONSTAT.—*See* CLARE CONSTAT.

PRECEPTS, (in a statute). 1 *Gray (Mass.)* 51, 58.

PRECES PRIMARÆ, or PRIMÆ.—A right of the crown to name to the first prebend that becomes vacant after the accession of the sovereign, in every church of the empire. This right was exercised by the crown of England in the reign of Edward I. 2 *Steph. Com.* (7 edit.) 670, n.

PRECINCT.—(1) A constable's or police district. (2) The immediate neighborhood of a palace or court. (3) A poll-district.

PRECINCT, (defined). 124 *Mass.* 172; 1 *Pick. (Mass.)* 91, 97.

PRECINCTS OF A PRISON, (defined). 50 *Me.* 290.

PRECIPE.—*See* PRÆCIPE.

PRECIPUT.—*See* PRÆCIPUT CONVENTIONNEL.

PRECLUDI NON.—Not to be barred. The technical name of the commencement of a replication to a plea in bar. 1 *Chit. Pl.* 627, 752.

PRECOGNITION.—In Scotland, pre-cognition is the "proof" of a witness committed to writing for use upon his examination. In criminal cases, the preliminary examination of witnesses is usually conducted under the superintendence of the procurator fiscal.—*Wharton*.

PRECONIZATION.—Proclamation.

PRE-CONTRACT.—Where one of the parties to a marriage was under a prior agreement to marry a third person, such prior agreement was called a "pre-contract." It was a canonical impediment to the marriage of either party. The ecclesiastical courts would formerly enforce this agreement, by compelling the parties to a public marriage, and if one of them had already married, such prior marriage would be void *ab initio*; but until thus avoided it was good. *Bish. Mar. & D.* § 53.

PREDECESSOR.—

§ 1. **Corporation sole.**—When a person who is a corporation sole, such as a bishop or parson, dies, and the land hold by him in his corporate capacity passes to his successor, the person so dying is called the "predecessor," just as a natural person from whom land descends to his heir is called the "ancestor." *Co. Litt.* 78b. *See* SUCCESSOR.

§ 2. **Succession Duty Act.**—As to the meaning of "predecessor" in the English Succession Duty Act, *see* SUCCESSION.

PREDECESSOR, (in succession duties act). 4 *App. Cas.* 427.

PREDIAL.—*See* PRÆDIAL.

PREDICAMENT.—The condition of things concerning which a logical proposition may be stated.

PREDICATE.—(1) As a noun: that which is said concerning the subject in a logical proposition, as, the law is the perfection of common sense; perfection of common sense being affirmed concerning the law (the subject), is the predicate or thing predicated. (2) As a verb, to affirm logically.

PRE-EMPTION.—

§ 1. **Land.**—The right of pre-emption is the right of purchasing property before or in preference to other persons.

§ 2. By the English Lands Clauses Consolidation Act (1845), where a company under its compulsory powers has purchased land which is not required for the purposes of its undertaking, and is not situate in a town, or used for building purposes, the company must first offer it for sale to the person owning the lands from which it was originally severed. This is commonly called the "right of pre-emption." Dart Vend. 761.

§ 3. **Prerogative of.**—Pre-emption was formerly part of the royal prerogative, and consisted in the right of buying up provisions and other necessaries for the use of the royal household, at an appraised value, in preference to all others, and without the consent of the owner. This right was surrendered by Charles II. at his restoration. 2 Steph. Com. 537.

§ 4. **In international law** pre-emption is the right of a government to purchase, for its own use, the property of the subjects of another power *in transitu*, instead of allowing it to reach its destination. Formerly the right appears to have been exercised in times of peace on any cargoes which entered the port of the purchasing State, but this practice has long fallen into disuse, and at the present day pre-emption is confined to time of war, and to cases where the goods are of such a description that their transport to the enemy of the pre-empting State would be manifestly to the disadvantage of the latter, while on the other hand the law of contraband does not justify their confiscation. Man. Int. Law 395.

PRE-EMPTION RIGHT.—See PRE-EMPTION, § 1.

PREFECT.—A chief official invested, in France, with the superintendence of the administration of the laws in each department. Merl. Repert.

PREFER.—To apply, to move for; as, "to prefer for costs," is a phrase for "to apply for costs."

PREFERENCE—PREFERENTIAL.—See FRAUDULENT PREFERENCE. As to preferential debts, see DEBT, § 12.

PREFERENCE, (when insolvent debtor may make). 7 Pet. (U. S.) 608; 12 Id. 178; 4 Wash. (U. S.) 282.

PREFERENTIAL ASSIGNMENT.—An assignment for benefit of creditors, which directs that one or more of the creditors shall be paid in full before others receive anything. In some of the States such an assignment is lawful, in others it is not.

PREFERRED, (equivalent to "carried on"). 3 Q. B. 901, 906.

— (of an indictment means "tried") Wilberf. Stat. L. 133.

PREFERRED STOCKHOLDERS, (equivalent to "preferred creditors," or "preferred certificate holders"). 31 Ohio St. 116, 128.

PREFERRED CREDITOR.—A creditor whom the debtor has directed shall be paid before other creditors.

PREFERRED, or PREFERENCE SHARES.—Shares in companies entitled to a preference over the ordinary shares of the company. Preference shares cannot be issued, in England, unless there is a power to do so, contained either in the memorandum (which is unusual) or in the articles of association of the company. Harrison v. Mexican Ry. Co., L. R. 19 Eq. 368.

PREGNANCY, PLEA OF.—A plea which a woman capitally convicted may plead in stay of execution; for this, though it is no stay of judgment, yet operates as a respite of execution until she is delivered. See DE VENTRE INSPICIENDO; JURY, § 10.

PREGNANT.—See AFFIRMATIVE PREGNANT; NEGATIVE PREGNANT.

PREGNANT WOMAN, (in a statute). 22 Hun (N. Y.) 525.

PREJUDICE.—Injury. An offer which is made "without prejudice" cannot be construed as an admission of liability, or given in evidence at all (Best Ev. 670), except for a wholly collateral purpose, *e. g.* to account for delay in asserting or prosecuting a claim. So the denial of a motion "without prejudice" is a virtual permission for its renewal.

PREJUDICE, (does not necessarily imply ill-will). 5 Cush. (Mass.) 297.

PREJURAMENTUM.—See ANTE JURAMENTUM.

PRELATE.—An ecclesiastic of the highest honor and dignity.

PRELECTOR.—A reader; a lecturer.

PRELEVEMENT.—In the French law, that portion of the firm assets which a partner is entitled to take out before any regular division is made between the partners.

PRELIMINARY ACT.—In England, in actions for damage by collision between vessels,

unless the court otherwise orders, the solicitor for each party, before any pleading is delivered, must file a sealed-up document, called a "preliminary act," which is not opened until ordered by the court. It contains a statement as to the names of the vessels and their masters, the time and place of the collision, the state of the wind, weather and tide, the course, speed and lights of each vessel, and other particulars tending to show how the collision happened. If both solicitors consent, the court may order the preliminary acts to be opened and the evidence to be taken thereon without any pleadings being delivered. (Rules of Court, xix. 30.) "The object of the rule requiring preliminary acts is to obtain a statement *recenti facto* of the leading circumstances, and to prevent either party varying his version of facts, so as to meet the allegations of his opponent. The court will never allow a party to contradict his own preliminary act at the hearing." Wms. & B. Adm. 253.

PRELIMINARY PROOF.—In American insurance, marine policies generally provide that a loss shall be payable in a certain time, usually sixty days, "after proof," meaning "preliminary proof," which is not particularly specified. Fire policies usually specify the preliminary proof. Life policies, like marine, usually make the loss payable sixty days after notice and proof.—*Bouvier*.

PREMEDITATED, (defined). 23 Ind. 231, 262; 18 Am. Dec. 778 n., 781 n.; 2 Wheel. Cr. Cas. 86.

— (synonymous with "deliberate"). 15 Nev. 407.

PREMEDITATED DESIGN, (in a statute). 1 Park. (N. Y.) Cr. 347.

PREMEDITATED DESIGN TO EFFECT DEATH, (signifies merely an intent to kill). 36 Wis. 226.

PREMEDITATEDLY, (defined). 74 Mo. 211.

PREMEDITATION.—In criminal law (more particularly the law of homicide), previous deliberation (*q. v.*), contrivance or design to commit an offense. (See *AFORTHUGHT*; *MALICE*, § 3.) As to what constitutes such premeditation as to make a killing murder in the first degree, the cases are irreconcilably in conflict.

PREMEDITATION, (distinguished from "deliberation"). 74 Mo. 250.

PREMIER.—A principal minister of state; the prime minister.

PREMIER SERJEANT, THE QUEEN'S.—This officer, so constituted by letters-patent, has pre-audience over the bar after the attorney and solicitor-general and queen's advocate. 3 Steph. Com. (7 edit.) 274 n.

PREMISES.—

§ 1. In the primary sense of the word, "premises" signifies that which has been before mentioned. Thus, after a recital of various facts in a deed, it frequently proceeds to recite that in consideration of the premises, meaning the facts recited, the parties have agreed to the transaction embodied in the deed. Wms. Pers. Prop. 14. See *AGREEMENT*, § 1.

§ 2. In a conveyance, when the property to be dealt with has been fully described, it is generally referred to in the subsequent parts of the deed, as "the premises hereinbefore described and intended to be hereby assured," or similar words. 1 Dav. Prec. Conv. 80.

§ 3. From this use of the word, "premises" has gradually acquired the popular sense of land or buildings. Originally, it was only used in this sense by laymen, and it is never so used in well-drawn instruments, but it is frequent in badly-drawn agreements and in statutes. *Æ. g.* the English Licensing Act, 1872, where "licensed premises" means premises in respect of which a license has been granted and is in force.

§ 4. In its technical sense, the "premises" is that part of a deed which precedes the *habendum*, and, therefore, includes the introduction, and (in indentures) the date, the parties, or (in deed polls) the name of the grantor, &c., the recitals, the consideration, and the grant, release or other operative part. Co. Litt. 6a; Shep. Touch. 74; 1 Dav. Prec. Conv. 32. See the various titles.

PREMISES, (defined). 44 Me. 416; 3 Gill (Md.) 198, 201; 15 Md. 63; 19 Vt. 272, 275; Hob. 276.

— (synonymous with "lot"). 40 Wis. 695, 701.

— (in conveyances). 2 Beas. (N. J.) 322; 2 McCart. (N. J.) 418, 462.

— (in a policy of insurance). 19 Hun (N. Y.) 284, 286; 45 Superior (N. Y.) 394; 14 Wend. (N. Y.) 461.

— (in a statute). 49 Me. 455, 459; 21 Ohio St. 184.

— (in a submission to arbitration). 4 Rawle (Pa.) 304, 305.

— (in a will). 1 East 456; 17 Ves. 75.

PREMIUM.—In granting a lease, part of the rent is sometimes capitalized and paid in a lump sum at the time the lease is granted. This is called a "premium."

A limited owner, such as a tenant for life, cannot as a rule take a premium on granting a lease under a power, as the power generally forbids him to do so. *See SETTLED ESTATES ACT.*

PREMIUM OF INSURANCE.—

See INSURANCE, § 1.

PREMIUM NOTE.—A note given in payment of the whole or a part of the premium on a policy of insurance.

PREMIUM PUDICITIÆ.—The price of chastity. The consideration which a man promises to pay to a woman with whom he has illicit intercourse. Such a consideration is invalid to sustain an executory contract, as being *contra bonos mores*.

PREMUNIRE.—*See PRÆMUNIRE.*

PRENDER.—To take anything as of right before it is offered.

PRENDER DE BARON.—To take a husband.—*Cowell.*

PREPENSE.—Forethought; pre-conceived; contrived beforehand. *See MALICE, § 3.*

PREROGATIVE.—

§ 1. By way of exception.—Prerogative means those exceptional powers, pre-eminences and privileges which the law gives to the sovereign. (Co. Litt. 90 b; 1 Bl. Com. 239; Cox Inst. 592; Chit. Prerog.) The term seems formerly to have been applied to other persons, *e g.* archbishops. (*See PREROGATIVE COURTS.*) They are either direct or by way of exception. (2 Steph. Com. 475.) Those by way of exception are such as exempt the sovereign from some general rules binding on the rest of the community, as that lapse of time is no bar to a claim by the sovereign, though this rule has been modified by statute. Co. Litt. 90 b; Brown Lim. 239. *See NULLUM TEMPUS OCCURRIT REGI; REGALIA.*

§ 2. Direct.—The direct prerogatives may be divided into three kinds: as they regard the royal character, the royal authority and the royal income. To the first class is generally referred the rule that the king can do no wrong; in other words, that he is not liable to be sued or punished for any act or default. (*See PETITION OF RIGHT.*) The second class

includes the right of sending and receiving ambassadors, making treaties, declaring war and peace, assembling, proroguing and dissolving the national legislature, raising and regulating fleets and armies, (*see MUTINY ACT,*) appointing ports and harbors (*q. v.*), appointing judges and magistrates, creating titles and offices, and coining money. (1 Bl. Com. 252 *et seq.*; 2 Steph. Com. 484 *et seq.*; May Parl. L. 43 *et seq.*) The third class, or fiscal prerogatives, are the sources of the revenue; these, however, though, in England, nominally belonging to the crown, have for long past been surrendered to the public use, and now form part of the public income known as the Consolidated Fund (*q. v.*), out of which the crown receives an annual sum, called the "Civil List" (*q. v.*), for the expenses of the royal household and establishment. The ancient fiscal prerogatives included the profits of the demesne lands of the crown, the right to royal fish, wrecks, treasure-trove, waifs and estrays, escheats, &c. The rest of the public income consists chiefly of taxes, duties and other imposts voted by the national legislature.

§ 3 Protective.—The English crown also has certain protective prerogatives, such as its prerogatives in connection with charities, idiots and lunatics, and the foreshore of lands adjoining the sea. *Att.-Gen. v. Tomline*, 12 Ch. D. 214; 14 *Id.* 58.

PREROGATIVE COURTS.—Before the Probate Court (*q. v.*) was established there was an ecclesiastical court held in each province in England, before a judge appointed by the archbishop, for granting probates and administrations in cases where the deceased left *bona notabilia* (*q. v.*) in different dioceses. It was called a Prerogative Court because the archbishop claimed the jurisdiction by way of special prerogative. 3 Steph. Com. 305 *n.*

PREROGATIVE LAW.—That part of the common law of England which is more particularly applicable to the king. Com. Dig. tit. "Ley." (A).

PREROGATIVE WRITS.—Remedies of an extraordinary kind, granted by the courts in certain cases, but never as a matter of right, they being a direct intervention of the government with the liberty or the property of the subject. The principal writs of this nature are: (1) the writ of *procedendo*; (2) the writ of *mandamus*; (3) the writ of *prohibition*; (4) the writ of

quo warranto; (5) the writ of *habeas corpus*; and (6) the writ of *certiorari*.

PRESBYTER.—A priest; elder; or honorable person.

PRESBYTERIUM.—That part of the church where divine offices are performed; formerly applied to the choir or chancel, because it was the place appropriated to the bishop, priest, and other clergy, while the laity were confined to the body of the church.—*Jacob*.

PRESCRIBABLE.—That to which a right may be acquired by prescription.

PRESCRIBE.—

§ 1. To prescribe is to claim a right by prescription. As to the meaning of the expression "to prescribe in a *que estate*," see **PRESCRIPTION**, § 6.

§ 2. In modern statutes relating to matters of an administrative nature, such as procedure, registration, &c., it is usual to indicate in general terms the nature of the proceedings to be adopted, and to leave the details to be prescribed or regulated by rules or orders to be made for that purpose in pursuance of an authority contained in the act. See **ORDER**; **RULE**.

PRESCRIBED BY LAW, (defined). 5 Cal. 112.

PRESCRIPTION.—In the Roman law the *prescriptio* was a clause placed at the head of the pleadings (*præ*, before, and *scribere*, to write), in order to raise a kind of preliminary objection or reservation. One of the cases in which a defendant could make use of a *prescriptio* was where he wanted to raise the defense that the plaintiff's claim was barred by a Statute of Limitations (3 Ortolan Inst. 632), hence the modern use of the word.

§ 1. **Corporation.**—Prescription is where a right, immunity or obligation exists by reason of lapse of time (*infra*, § 3). (Co. Litt. 113a.) Thus, where a number of persons in succession have acted and been treated as a corporation from time immemorial without being able to show any express creation, they constitute a corporation by prescription. (Mellor v. Spateman, 1 Wms. Saund. 339.) So persons may be tenants in common of land by prescription. Litt. § 310.

§ 2. **Incorporeal hereditaments.**—More commonly, however, prescription is applied to incorporeal hereditaments and rights or obligations connected with the user of land, to signify that they have been enjoyed as of right, (see **ENJOYMENT**), and without interruption for a certain period. Thus, prescription is one of the principal

modes by which easements, profits à prendre, franchises and other incorporeal hereditaments are created or evidenced. So, also, a privilege or exemption may be prescriptive, *e. g.* a *modus decimandi*, a *de non decimando*, and an exemption from toll or stallage (*q. v.*) Shelf. R. P. Stat. 35; see, also, *Lawrence v. Jenkins*, L. R. 8 Q. B. 274.

§ 3. Prescription differs from custom in being personal, *i. e.* when a person claims a right by prescription, he must allege that it has been enjoyed by him and his ancestors or predecessors in title. (Co. Litt. 113b; *Austin v. Amhurst*, 7 Ch. D. 689. See **CUSTOM**.) Prescription differs from limitation in being applicable only to incorporeal hereditaments and similar rights (Co. Litt. 114a), and not to land or other hereditaments. (Shelf. R. P. Stat. 36.) This, however, does not seem to have been always the case, for Britton (1a, 29a) uses prescription in the sense both of limitation and particular custom. Villenage could also exist by prescription (Litt. § 175), and Littleton says that two persons may be tenants in common of land by title of prescription (§ 310); and from Coke's remarks on the point it seems that this is still law. Co. Litt. 195b; Wms. Comm. 18.

With reference to the length of time required, prescription is either at common law or by statute.

§ 4. **At the common law**, a title by prescription is where a right has been enjoyed from time immemorial, or time out of mind. By analogy to the old Statutes of Limitation, "time out of mind" was held to mean the first year of Richard I.'s reign, (Litt. § 170); but when this period became inconveniently long, it was held to be sufficient if evidence of the enjoyment of the right was carried back as far as living memory would go. And when the Stat. 21 Jac. 1, c. 16, limited the time for bringing a possessory action to twenty years, the courts held by analogy that if a right had been enjoyed for twenty years, it should be presumed to have been enjoyed from time immemorial; the presumption being based, according to some, on the fiction of a lost grant (see **LOST GRANT**); according to others, on the analogy between prescription and limitation. (Gale Easem. 159. See on this point and

also the question whether the presumption was rebuttable or not by proof of the modern origin of the right, *Angus v. Dalton*, 3 Q. B. D. 85.) According to some of the older writers, however, the real common law prescription was when a right had been enjoyed "from time whereof the memory of man runneth not to the contrary, that is as much as to say, when such a matter is pleaded, that no man then alive hath heard any proofe of the contrary, nor hath no knowledge to the contrary," (Litt. § 170,) but subsequently the two expressions "time out of mind," and "time whereof the memory of man runneth not to the contrary," became synonymous. See Co. Litt. 114b. See, also, MEMORY.

§ 5. **Statutory.**—As to the statutory periods of prescription, see PRESCRIPTION ACT.

§ 6. With reference to the manner in which a prescriptive right is claimed, prescription is of three kinds, namely: (1) Where the person claiming the right proves that it has been enjoyed by him and his ancestors during the time required by law, as in the case of an advowson or common in gross; (2) where the members of a corporation and their predecessors have enjoyed the right for the period required by law, (Co. Litt. 113b; *Mellor v. Spateman*, 1 Wms. Saund. 389,) and (3) where the person claiming the right proves that it has been enjoyed by him and his predecessors in title; or, as the old writers say, he must claim that the right is *en luy et en ceux que estate il ad*, (Litt. § 183,) i. e. "in him and in those whose estate he hath" (Co. Litt. 121a); hence this is called "prescribing in a *que* estate." (As to the manner in which a prescription is pleaded, see 2 and 3 Will. IV. c. 71, § 5; Shelf. R. P. Stat. 21.) A prescription in a *que* estate is simply a right annexed to and going along with certain lands, as where a man claims a right of advowson as appendant to a manor belonging to him. 2 Bl. Com. 266.

§ 7. The rule of common law pleading used to be that a prescription in a *que* estate could only be claimed by a tenant in fee, and that if a tenant for a less estate wished to claim such a right, he was obliged to allege it as belonging to the tenant in fee. The most important practical result of this rule was that copyholders, being in theory mere tenants at will, were obliged to pre-

scribe in the name of the lord of the manor, in whom the fee is vested; hence, they were allowed to claim rights of common against the lord by custom instead of prescription. (Wms. Comm. 16. See CUSTOM, § 1.) The rule of pleading above referred to was abolished, in England, by the Prescription Act, and now a tenant for any estate may prescribe in his own name. See ENJOYMENT; INTERRUPTION; POSSESSION.

PRESCRIPTION, (defined). 45 Iowa 139.

—— (title by). 14 Mass. 49; 8 Pick. (Mass.) 504, 511; 10 Serg. & R. (Pa.) 63; 7 Wheel. Am. C. L. 417.

—— (will not give right to erect a building on another's land). 2 Johns. (N. Y.) 357.

—— (as used in the Code Napoleon, synonymous with "limitation"). 3 Gilm. (Ill.) 637.

PRESCRIPTION ACT.—

§ 1. The statute 2 and 3 Will. IV. c. 71, passed to limit the period of prescription in certain cases.

§ 2. In the case of rights of common and other profits à prendre, the period of enjoyment as of right required to establish the claim is thirty years, subject to an extension in case the person against whom it is claimed was under disability during part of that period; but in any case, enjoyment for sixty years establishes an absolute and indefeasible right.

§ 3. In the case of rights of way, watercourses and other affirmative easements, the terms are respectively twenty and forty years; in the case of lights, enjoyment for twenty years gives an absolute and indefeasible right. As to what is "enjoyment as of right," see ENJOYMENT; and as to the effect of interruption, see that title. The act does not apply to any negative easements except that of lights. See Shelf. R. P. Stat. 1; Gale Easem. 164 et seq.; *Angus v. Dalton*, 3 Q. B. D. 85.

PRESCRIPTION, TIME OF.—See PRESCRIPTION, §§ 4, 5.

PRESENCE.—The fact of being in a particular place, considered with relation to the doing of some act there. Presence is either *actual*, as where the person is within the same enclosure and in actual sight; or, *constructive*, as where he is so near as to be held to be present in contemplation of law.

PRESENCE, (in the defendant's). 2 T. R. 18; 7 Id. 152; 8 Id. 284.

—— (of testator when witnessing will). 3 Harr. & M. (Md.) 477; 1 Bro. Ch. 99; 4 Bro. P. C. 70; Com. 531; 3 Mod. 259; 1 P. Wms. 740; Salk. 395, 688; Str. 1109.

PRESENCE, IN TIME, (synonymous with "with-in the view"). 8 Petersd. Abr. 119.

—— (in a statute). 1 Ves. 16.

PRESENCE OF A FEMALE, (obscene and vulgar language used in). 48 Ga. 311.

PRESENCE OF THE PRISONER, STATEMENTS MADE IN TIME, (implies that they were made in his hearing). 1 Keyes (N. Y.) 66.

PRESENCE OF THE WITNESSES, (in a statute). 7 Halst. (N. J.) 71.

PRESENT—PRESENTATION.—

§ 1. **Bill of exchange.**—Primarily, to present is to tender or offer. Thus, to present a bill of exchange for acceptance or payment is to exhibit it to the drawee or acceptor (or his authorized agent), with an express or implied demand for acceptance or payment. Byles Bills 183, 201. *See* BILL OF EXCHANGE, § 5; HONOR.

§ 2. **Presentation to benefice.**—In ecclesiastical law, presentation is where the patron or owner of an advowson offers a clerk in holy orders to the bishop of the diocese to be instituted as parson or vicar of the living. 1 Bl. Com. 388; Phillim. Ecc. L. 348; Co. Litt. 120a. *See* ADVOWSON; INSTITUTION; NEXT PRESENTATION; SIMONY.

PRESENT, (in a statute). 9 Gray (Mass.) 291, 292.

— (in law of felony). 4 Cranch (U. S.) 492; 9 Pick. (Mass.) 516.

PRESENT ATTENDANT PHYSICIAN, TO MY, (in a will). 59 Me. 325.

PRESENT LOCATED LINE, (in railroad charter). 18 Minn. 109.

PRESENT USE.—One which has an immediate existence, and is at once operated upon by the Statute of Uses.

PRESENTATION, (defined). 20 Eng. L. & Eq. 277.

PRESENTATION OFFICE.—The office of the lord chancellor's official, the secretary of presentations, who conducts all correspondence having reference to the twelve canonries and six hundred and fifty livings in the gift of the lord chancellor, and draws and issues the fiats of appointment. Second Rep. Leg. Dep. Comm. 34; Rep. Comm. on Fees 10.

PRESENTATIVE ADVOWSON.—*See* ADVOWSON.

PRESENTEE.—One presented to a benefice.

PRESENTER.—One that presents.

PRESENTLY.—At once; immediately; now. Applicable to a right which may be exercised immediately, as opposed to one in reversion or remainder.

PRESENTMENT.—

§ 1. **Customary Court.**—A presentment is a kind of report by a jury or other body of men. Thus, formerly, at every Customary Court of a manor, all events relating to the alienation of the copyhold lands of the manor were presented by the homage for the information of the lord. But by the modern statute a presentment is made

unnecessary for the alienation of copyholds. Wms. Seis. 36; 4 and 5 Vict. c. 35. *See* Phillips v. Salmon, 3 C. P. D. 97; Britt. 9a *et seq.*

§ 2. **Jury.**—Most commonly, however, presentment signifies one made by a jury acting in a judicial capacity; and, in its general sense, it includes inquisitions of office (*q. v.*), and indictments by a grand jury. But in the narrower sense of the word, a presentment is the notice taken by a grand jury of any matter or offense from their own knowledge or observation, without any bill of indictment laid before them; such as the presentment by them of a nuisance, a libel, or the like, upon which the officer of the court must afterwards frame an indictment. 4 Bl. Com. 301.

PRESENTMENT, (defined). 13 Fla. 651, 663.

— (distinguished from "indictment"). 1 Chit. Crim. L. 162, 163.

— (in a statute). 9 Gray (Mass.) 291, 292.

PRESENTS.—"These presents" is the phrase by which a deed mentions itself, the thing then actually made or spoken of.

PRESERVE, (in a statute). 6 Daly (N. Y.) 280.

PRESIDE, (in State constitution). 47 N. Y. 330.

PRESIDE, THE SHERIFF SHALL, (in a statute). 2 Allen (Mass.) 558.

PRESIDENT.—One placed in authority over others; one at the head of others; a governor; a chairman; the chief magistrate of the United States.

PRESIDENT, (of corporation, note indorsed by). 11 Mass. 94, 288, 293; 14 Id. 180.

PRESIDENT OF THE COUNCIL.—A great officer of State; a member of the cabinet. He attends on the sovereign, proposes business at the council-table, and reports to the sovereign the transactions there. 1 Bl. Com. 230; 2 Steph. Com. (7 edit.) 458, 615 n.

PRESIDENT OF THE UNITED STATES.—The official title of the chief executive officer of the Federal government in the United States. *See* CABINET, § 2.

PRESS, THE.—There is no censorship over the press, but the author, the printer, and the publisher of a libel are liable to an action for damages at the suit

of the party injured, or to an indictment, or in certain cases to a criminal information. *See* LIBERTY OF THE PRESS.

PRESSING SEAMEN.—*See* IMPRESSMENT, § 1.

PRESSING TO DEATH.—*See* PEINE FORTE ET DURE.

PREST.—A duty in money that was to be paid by the sheriff on his account, in the Exchequer, or for money left or remaining in his hands. (2 and 3 Edw. VI. c. 4.)—*Cowell*.

PRESTATION-MONEY.—A sum of money paid by archdeacons yearly to their bishop; also purveyance.—*Cowell*.

PRESTIMONY, or PRÆSTIMONIA.—In the canon law, a fund or revenue appropriated by the founder for the subsistence of a priest, without being erected into any title or benefice, chapel, prebend, or priory. It is not subject to the ordinary; but of it the patron, and those who have a right from him, are the collators.

PREST-MONEY.—A payment which binds those who receive it.—*Cowell*.

PRESUME, (in a statute). L. R. 4 C. P. 315.
PRESUMED, (not synonymous with "inferred"). 46 Conn. 380, 385.

PRESUMPTIO JURIS ET DE JURE.—*See* PRESUMPTION, § 2.

PRESUMPTIO JURIS TANTUM.—*See* PRESUMPTION, § 3.

PRESUMPTION.—

§ 1. In the law of evidence, a presumption is a conclusion or inference as to the truth of some fact in question, drawn from some other fact judicially noticed, or proved or admitted to be true.

Presumptions are of three kinds.

§ 2. **Irrebuttable or conclusive** presumptions (*presumptiones juris et de jure*) are absolute inferences established by law; they are called "irrebuttable" because evidence is not admissible to contradict them. Thus, an infant under the age of seven years is presumed to be incapable of committing a felony, and the presumption cannot be rebutted by the clearest evidence of a felonious intention. (Best Ev. 418; Co. Litt. 373n.) Irrebuttable presumptions are more properly called "rules of law," or "fictions of law," according as the fact presumed is probably true, or is known to be false. *See* FICTION.

§ 3. **Inconclusive or rebuttable** presumptions of law (*presumptiones juris tantum*) are inferences which the law requires to be drawn from given facts, and which are conclusive until disproved by evidence to the contrary; thus, an infant between seven and fourteen is presumed to be incapable of committing a felony, but evidence may be given to prove a felonious intention. Best Ev. 425.

§ 4. **Of fact.**—Presumptions of fact (*presumptiones hominis vel facti*) are inferences which the tribunal (*e. g.* a jury) is at liberty, but not compelled, to draw from the facts before it; if the tribunal thinks that the facts do not support the inference suggested, the presumption fails from its own weakness. This class is divisible into strong presumptions, or those which shift the burden of proof, and slight presumptions, which do not. Thus, possession is a strong presumption or *prima facie* evidence of property, while the presumption of guilt arising from the fact of a person having a pecuniary interest in the death of a murdered person is too slight to put him on his defense. Best Ev. 431. For other divisions, *see* *Id.* 428; Co. Litt. 6b. *See* POSSESSION, § 3.

§ 5. **Mixed** presumptions, or presumptions of facts recognized by law, or presumptions of mixed law and fact, are certain presumptive inferences, which, from their strength, importance or frequent occurrence, attract as it were the observation of the law. The presumption of a "lost grant" (*q. v.*) falls within this class. Best Ev. 436.

PRESUMPTION, (defined). 16 La. Ann. 374; 69 N. Y. 75, 82; 7 Wend. (N. Y.) 62, 66.

PRESUMPTION OF FACT.—*See* PRESUMPTION, § 4.

PRESUMPTION OF LAW.—*See* PRESUMPTION, §§ 2, 3, 5.

PRESUMPTION OF LIFE OR DEATH.—Where a person is once shown to have been living, the law will, in general, presume that he is still alive, unless after a lapse of time considerably exceeding the ordinary duration of human life; but if there be evidence of his continuous unexplained absence from home and of the non-receipt of intelligence concerning him

for a period of seven years, the presumption of life ceases. But although a person who has not been heard of for seven years under such circumstances is presumed to be dead, the law raises no presumption as to the time of his death. And, therefore, if any one has to establish the precise time during those seven years at which such person died, he must do so by evidence. *Doe v. Nepean*, 5 Barn. & Ad. 86; *Nepean v. Doe*, 2 Mees. & W. 894; *Tayl. Ev.* § 157.)—*Wharton*.

PRESUMPTION OF SURVIVORSHIP.—The devolution of property frequently depends upon the survivorship of one of two or more persons who perish by the same calamity, such as shipwreck, battle, fire, collision of trains, &c., when there is no direct evidence as to the survivorship. In such cases the law of some countries has recourse to artificial presumptions, based upon the probabilities of survivorship resulting from age and sex; but our law recognizes no such presumption, but requires proof of survivorship from the person who relies upon it, and, in the absence of evidence, it considers that both or all of the persons so dying perished at the same time, and that neither transmitted his rights to the other or others. In such cases, though medical science cannot solve the difficulty, it may sometimes assist in forming a conclusion. *See Fearn's Posthumous Works* 37, 72; *Wing v. Angrave*, 8 H. L. Cas. 183; *Tayl. Ev.* § 178; *Best Pres.* and *Beck Med. Jur.*, where the laws and regulations of the continental nations are stated.—*Wharton*.

PRESUMPTIONS IN CRIMINAL LAW.—Presumptions are admissible in criminal as well as in civil matters, and in fact (under the name of circumstantial evidence) are very much used in criminal matters. Such presumptions, when of fact, may be either violent, probable, or slight. The most usual presumptions of law, in criminal cases, are the presumption of malice from the act of killing, or from any wrongful act done without just cause or excuse; the presumption that every man must intend the necessary consequence of his own act; the presumption in favor of the innocence of the accused;

all of which presumptions are *juris tantum*, and may accordingly be rebutted by the proper evidence.—*Brown*.

PRESUMPTIVE EVIDENCE.—A phrase commonly used to denote circumstantial evidence (*see* CIRCUMSTANTIAL EVIDENCE); and as so used, it is opposed to direct evidence (*see* DIRECT EVIDENCE). Circumstantial or presumptive evidence is not of the nature of secondary but of primary or original evidence (*see* PRIMARY EVIDENCE). The probative force of presumptive evidence consists in the chain constructed out of moral and physical coincidences, especially when such coincidences are of mutually independent origin. In criminal law, the conduct of the accused antecedent to and subsequent to the commission of the crime, afford presumptive evidence of his guilt or innocence; also his motions, means, and opportunities should not be disregarded; also his previous threats, his previous attempts, his preparations, and such like, are material circumstances affecting the question of his guilt. *See* EVIDENCE, § 4.

PRESUMPTIVE HEIR.—One who, if the ancestor should die immediately, would be his heir; but whose right of inheritance may be defeated by the contingency of some nearer heir being born.

PRESUMPTIVE TITLE.—A barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property (*jus possessionis*), without any apparent right, or any pretense of right, to hold and continue such possession. This may happen when one man disposses another; or where, after the death of the ancestor, and before the entry of the heir, a stranger abates and holds out the heir. The law assumes that the actual occupant of land has the fee-simple in it, unless there be evidence rebutting such presumption, or his possession be properly explained and shown to be consonant with the right of the true proprietor of the reversionary fee. Such a presumption, in the absence of any satisfactory proof to the contrary, will sustain an action for a trespass by a wrong-doer, and will indeed be strength-

ened, by lapse of time, into a title complete and indefeasible.

This assumption is based on the well known feudal maxim, that seisin must be the basis or standpoint in the deduction of every title, except in the case of descent.

PRET.—In the French law, a loan, and may be either (1) *Prêt à usage*, corresponding to the *commodatum* of Roman law, or (2) *Prêt à consommation*, corresponding to the *mutuum* of Roman law. See **COMMODATUM**; **MUTUUM**.

PRET A CONSUMMATION.—See **PRET**.

PRET A USAGE.—See **PRET**.

PRETENCE.—See **FALSE PRETENCE**.

PRETENCE OF A CERTAIN WARRANT, BY, (in a declaration). 6 Mod. 170.

PRETENDED RIGHT.—Where one is in possession of land, and another, who is out of possession, claims and sues for it; here the pretended right or title is said to be in him who so claims and sues for the same. Mod. Cns. 302.

PRETENDED TITLE STATUTE.—The Statute 32 Hen. VIII. c. 9, § 2. It enacts that no one shall sell or purchase any pretended right or title to land, unless the vendor hath received the profits thereof for one whole year before such grant, or hath been in actual possession of the land, or of the reversion or remainder, on pain that both purchaser and vendor shall each forfeit the value of such land to the king and the prosecutor. See 4 Broom & H. Com. 150.

PRETENSION.—In the French law, a claim made to a thing which the claimant believes himself entitled to demand, but which is not admitted or adjudged to be his.

PRETER LEGAL.—Not agreeable to law.

PRETERITION.—The entire omission of a child's name in the father's will, which rendered it null—exheredation being allowed, but not preterition.—*Colquh. Rom. Civ. Law*, § 1304.

PRETIUM AFFECTIONIS.—An imaginary value put on a thing by the fancy of the owner in his affection for it.—*Bell Dict*.

PRETIUM PERICULI.—The price of the risk; e. g. the premium paid on a policy of insurance; also, the interest paid on money advanced on bottomry or *respondentia*.

PRETIUM SEPULCHRI.—A mortuary (q. v.)

Pretium succedit in loco rei (2 Buls. 321): The price succeeds in the place of the thing.

PRETORIUM.—In the Scotch law, a court house, or hall of justice.

PREVAIL, (in a statute). 4 Mass. 625.

PREVAILING PARTY, (who is). 61 Me. 105.
— (in a statute). 102 Mass. 120, 122, 123, 53 Mo. 328.

PREVARICATION.—A collusion between an informer and a defendant, in order to a feigned prosecution.—*Cowell*. Also, any secret abuse committed in a public office or private commission; also, the willful concealment or misrepresentation of truth, by giving evasive or equivocating evidence.

PREVENTION.—In the canon law, the right which a superior person or officer has to lay hold of, claim, or transact, an affair prior to an inferior one, to whom otherwise it more immediately belongs.

PREVENTIVE SERVICE.—The coast guard. See 19 and 20 Vict. c. 83.

PREVIOUS, (in a statute). 8 Barb. (N. Y.) 603.

PREVIOUS CHASTE CHARACTER, (of prosecutrix in seduction case). 4 Minn. 325.

PREVIOUS CONVICTION.—Under Stats. 7 and 8 Geo. IV. c. 23, § 11; 24 and 25 Vict. c. 96, § 7, and 27 and 28 Vict. c. 47, § 2, and similar enactments in many of the States, persons convicted of certain offenses, after a previous conviction for felony, are liable to severer sentences than they would otherwise be. And, in England, where a person is convicted of felony or of certain misdemeanors, and a previous conviction for a like offense is proved against him, he may, in addition to the ordinary punishment for the offense, be subjected to police supervision (q. v.) Stat. 34 and 35 Vict. c. 112; Steph. Cr. Dig. § 19.

PREVIOUS QUESTION.—In parliamentary procedure, a method of avoiding a vote. After a debate is closed, or when there is no debate, the speaker or chairman ordinarily and as a matter of course puts the question which has been the subject of debate; but any member of the body may intercept this act of the speaker's by moving the previous question. Members desiring to oppose the main question vote (curiously enough) *against* and not *for* the previous question; and if

the previous question is carried, it is (in effect) lost, and the main question is carried without further discussion or amendment; but if the previous question is not carried, it is (in effect) carried, and the main question is lost. (May Parl. L. (6 edit.) 263-4.) For a difference in the English and American use of this motion, see Cushing's Manual.

PRICE.—The money value given on the purchase of a thing.

PRICE, (in a declaration). Dyer 121 b.

— (in an indictment). Stark. Cr. Pl. 220.

— (in a statute). 54 N. Y. 173.

— (inadequacy of, no ground to set aside an annuity). 8 Ves. 133.

— (inadequacy of, no ground for refusing specific performance). 9 Ves. 246.

— (inadequacy of, when evidence of fraud). 16 Ves. 512.

— (inadequacy of, no ground for setting aside a contract). 3 Cow. (N. Y.) 608; 2 Yeates (Pa.) 249; 2 Desaus. (S. C.) 636; 1 Cox Ch. 332, 428; 2 Id. 77; 10 Ves. 471; 14 Id. 215; 17 Id. 19, 20.

— (inadequacy of, when a sale will be set aside for). 3 Cow. (N. Y.) 445, 505.

— (inadequacy of, when sale will not be set aside for). Sax (N. J.) 1, 55; 11 Johns. (N. Y.) 553; 14 Id. 527; 2 Johns. (N. Y.) Ch. 1, 25; 1 Browne (Pa.) 11; 5 Serg. & R. (Pa.) 226; 2 Watts (Pa.) 104; 6 Id. 140; 8 Wheel. Am. C. L. 282; 1 McClell. & Y. 89; 5 Ves. 845.

PRICE CURRENT.—A list or enumeration of various articles of merchandise, with their prices, the duties (if any) payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, &c.—*Wharton*.

PRICE, MARKET, (defined). 13 Wend. (N. Y.) 98.

PRICES, WHOLESALE FACTORY, (in a promissory note). 2 Conn. 69, 82.

PRICKING FOR SHERIFFS.—In England, when the yearly list of persons nominated for the office of sheriff is submitted to the queen, she takes a pin, and to insure impartiality, as it is said, she lets the point of it fall upon one of the three names nominated for each county, &c., and the person upon whose name it chances to fall is sheriff for the ensuing year. This is called "pricking for sheriffs." *Atk. Sher.* 18.

PRIDE-GAVEL.—A rent or tribute. *Tayl. Hist. Gavelk.* 112.

PRIEST.—A minister of a church. (13 and 14 Car. II. c. 4, § 14.) A person under twenty-four years of age cannot be ordained a priest. 13 Eliz. c. 12, and 44 Geo. III. c.

43. See 2 Steph. Com. (7 edit.) 660. See, also, *CLERGY*.

PRIMA.—First.

PRIMA FACIE.—On the first face; at the first view.

PRIMA FACIE EVIDENCE.—That which, not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favor that it must prevail if it be credited by the jury, unless it be rebutted, or the contrary proved; *conclusive* evidence, on the other hand, is that which excludes, or at least tends to exclude, the possibility of the truth of any other hypothesis than the one attempted to be established. 1 Stark. Ev. 544.

PRIMA FACIE EVIDENCE, (defined). 6 Pet. (U. S.) 622; 14 Id. 334; 7 Mass. 279; 97 Id. 230; 1 Stark. Ev. 544.

PRIMA TONSURA.—The first crop.

PRIMÆ, or PRIMARIÆ PRECES.—See *PRECES PRIMARIÆ*.

PRIMÆ IMPRESSIONIS.—See *FIRST IMPRESSION*.

PRIMAGE.—A small payment made by the owner or consignee of goods to the master of the vessel in which they are shipped, for his care and trouble, and varies in amount according to the particular trade in which the ship is engaged. The payment of this sum is generally stipulated for in the bill of lading (*q. v.*) *Maud & P. Mer. Sh.* 88; *Sm. Merc. L.* 319. See *AVERAGE*, § 4.

PRIMARIA ECCLESIA.—The mother church. 1 Steph. Com. (7 edit.) 118.

PRIMARY.—First; chief; leading.

PRIMARY ALLEGATION.—The first or opening pleading in a suit in the ecclesiastical court. See *ALLEGATION*, § 2.

PRIMARY CONVEYANCE.—See *CONVEYANCE*, § 4.

PRIMARY ELECTION.—A popular election held by members of a particular political party, for the purpose of choosing delegates to a convention empowered to nominate candidates for that party to be voted for at an approaching election.

PRIMARY EVIDENCE.—As opposed to *secondary* evidence is, *e. g.* the original document itself, and not a copy thereof. Primary evidence is not the same as *direct* evidence, nor is secondary evidence the same as *circumstantial* evidence; but apparently, evidence called primary is so called, because it is to be *first* used (when it exists and is procurable) before resort is had to secondary evidence, which latter evidence is only to be secondly used upon proof of the loss, destruction, or non-procurability of primary evidence. *See* EVIDENCE, § 11.

PRIMARY OBLIGATION.—An obligation which is the principal object of the contract; for example, the primary obligation of the seller is to deliver the thing sold, and to transfer the title to it. It is distinguished from the accessory or secondary obligation to pay damages for not doing so. (1 Bouv. Inst. n. 702.)—*Bouvier*.

PRIMARY POWERS.—The principal powers or authority given to an agent. Story Ag. § 58.

PRIMATE.—An archbishop. The Archbishop of Canterbury is styled primate of all England; the Archbishop of York is primate of England simply. (Phillim. Ecc. L. 36, 1203.) Primacy is the office or authority of a primate.

PRIME BACON, (in an agreement). Holt 95.

— (in a contract). 2 Marsh. 141.

— (in a warranty). 6 Taunt. 446.

PRIME COST, (as synonymous with "actual cost"). 2 Mas. (U. S.) 53, 55.

PRIME SERJEANT.—The queen's first serjeant-at-law.

PRIMER.—A French law term, signifying first; primary.

PRIMER ELECTION.—First choice.

PRIMER FINE.—On suing out the writ or *præcipe*, called a "writ of covenant," there was due to the crown, by ancient prerogative, a *primer fine*, or a noble for every five marks of land sued for; that was one-tenth of the annual value. 1 Steph. Com. (7 edit.) 560.

PRIMER SEISIN.—First possession. A payment due by a tenant of land held of the crown *in capite ut de coronâ* if he succeeded to it by descent when of full age. The payment consisted of one year's profits of the land if it was in possession, and half a year's profits if it was in reversion. (Co. Litt. 77a; Staunf. P. C. & Fr. 11a.) Primer seisin was abolished by Stat.

12 Car. II. c. 24. *See* IN CAPITE; LIVERY; OUSTERLEMAIN.

PRIMICERUS.—The first of any degree of men. 1 Mon. Ang. 838.

PRIMITIÆ.—The first fruits which were presented to the gods by the ancients; also, the profits of a living during the first year after avoidance, formerly taken by the crown. 1 Steph. Com. (7 edit.) 199; 2 *Id.* 532.

PRIMO BENEFICIO, &c.—A writ directing a grant of the first benefice in the sovereign's gift.—*Cowell*.

Primo excutienda est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis (Co. Litt. 68): The full meaning of a word should be ascertained at the outset, in order that the sense may not be lost by defect of expression, and that the law be not without reasons.

PRIMOGENITURE.—LATIN: *primo-genitus*, first born.

The English rule of inheritance according to which the eldest of two or more males in the same degree succeeds to the ancestor's land to the exclusion of the others. It was a matter of far greater consequence in ancient times, before alienation by will was permitted, than it is at present, and from it has arisen the modern English custom of settling the family estates on the eldest son. Wms. Real Prop 49, 99. *See* DESCENT, § 7; ESTATE TAIL, § 11; SETTLEMENT.

PRIMOGENITUS.—A first born or eldest son. Bract. 33.

PRIMUM DECRETUM.—A provisional decree.

PRINCE.—A sovereign; a chief ruler of either sex. "Queen Elizabeth, a *prince* admirable above her sex for her princely virtues."—*Camden*. *See* 2 Steph. Com. (7 edit.) 602 n.

PRINCE OF WALES.—The eldest son of the English sovereign. He is the heir-apparent to the crown.

PRINCEPS.—In the civil law, the prince; the emperor.

Princeps et respublica ex justa causa possunt rem meam auferre (12 Co. 13): The prince and the republic, for a just cause, can take away my property.

Princeps legibus solutus est (D. 1, 3, 31): The emperor is released from the laws; is not bound by the laws.

Princeps mavult domesticos milites quam stipendiarios bellicis opponere casibus (Co. Litt. 69): A prince, in the chances of war, had rather employ domestic than foreign troops.

PRINCES OF THE ROYAL BLOOD.—The younger sons and daughters

of the English sovereign, and other branches of the royal family who are not in the immediate line of succession. 2 Steph. Com. (7 edit.) 451; 1 Broom & H. Com. 264.

PRINCIPAL.—

§ 1. **Principal and agent.**—A person who authorizes another to act on his behalf is called the “principal,” and the person so authorized is called the “agent.” The law of principal and agent deals both with the rights and duties of the principal and agent *inter se*, and with those of each of them toward third persons. As to the law of principal and agent generally, *see* Sm. Merc. L. 109 *et seq.*; Chit. Cont. 180 *et seq.* *See* AGENT; AUTHORITY; POWER OF ATTORNEY.

§ 2. **Undisclosed.**—When an authorized agent does an act in his own name and professedly on his own behalf, though really on behalf of his principal, the latter is said to be undisclosed. The general rule is that an agent contracting for an undisclosed principal is himself personally liable to the person contracting with him, and that the latter also has the option of suing the principal as soon as he discovers his existence, unless in the meantime the principal has *bonâ fide* paid his agent, in which case he is discharged from liability. Sm. Merc. L. 163; Chit. Cont. 205; Irvine v. Watson, 5 Q. B. D. 102, which was the case of an agent contracting on behalf of a disclosed but unnamed principal. Such a principal cannot discharge himself by merely paying his agent.

§ 3. **Principal and surety.**—A person who owes a debt for which another person is liable in case of his default in paying it, is called the “principal” or “principal debtor,” the other being his surety (*q. v.*) Chit. Cont. 470. *See* GUARANTY; INDEMNITY.

§ 4. **Principal and accessory.**—In criminal law, whoever actually commits, or takes part in the actual commission of a crime, is a principal in the first degree; whoever aids or abets the actual commission of a crime is a principal in the second degree; both being opposed to accessories (*q. v.*) Thus, if A., B., C. and D. go out with a common design to rob: A. commits the robbery, B. stands by ready to help, and C. is stationed some way off to keep watch; here A. is a principal in the first degree, and B. and C. are principals in the

second degree. (Steph. Cr. Dig. 22, 1^h distinction is not of itself of much importance, as all the principals to a crime are, as a rule, liable to the same punishment. 1 Russ. Cr. & M. 81; Steph. Cr. Dig. 27.

PRINCIPAL AND ACCESSARY (or ACCESSORY).—*See* PRINCIPAL, § 4.

PRINCIPAL AND AGENT.—*See* PRINCIPAL, § 1.

PRINCIPAL AND SURETY.—*See* PRINCIPAL, § 3; SURETY.

PRINCIPAL CHALLENGE.—A species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel. *See* CHALLENGE, § 1.

PRINCIPAL FACT.—A fact sought to be proved by evidence of other facts (evidentiary facts) from the existence of which it is to be deduced by inference.

PRINCIPAL OBLIGATION.—That obligation which arises from the principal object of the engagement which has been contracted between the parties. It differs from an accessory obligation. For example, in the sale of a horse, the principal obligation of the seller is to deliver the horse; the obligation to take care of him till delivered is an accessory engagement. (Poth. Obl. n. 182.) By principal obligation is also understood the engagement of one who becomes bound for himself, and not for the benefit of another. (*Id.* n. 186). —*Bowyer*.

PRINCIPALIS.—Principal; a principal debtor; a principal in a crime.

Principalis debet semper excuti antequam perveniatur ad fidei-jussores (2 Inst. 19): The principal ought always to be discussed before resort is had to the sureties. *See* DISCUSSION.

PRINCIPALS, (in larceny, who are). 11 N. W. Rep. 782.

Principia probant, non probantur (3 Co. 40): Principles prove, they are not proved.

Principiis obsta: Oppose beginnings. Branch erroneously translates this maxim “Oppose principles.”

Principium est potissima pars cuiusque rei (10 Co. 49): The principle of anything is its most powerful part.

PRINCIPLE, (in specification of patent). 2 H. Il. 463; Fess. Pat. 75.

——— (may mean constituent parts). 8 T. R. 106

PRINCIPLES.—Axiomatic truths; propositions so true or self-evident that they do not admit of proof or contradiction, unless by propositions which are still clearer.

PRINCIPLES AND USAGES OF LAW, (in a statute). 1 Baldw. (U. S.) 563.

PRINT, (in the copyright act). 5 Blatchf. (U. S.) 325.

PRINTED AND PUBLISHED, (in a statute). 1 Chit. 24.

PRINTER, (who is not). 9 Bing. 77.

PRINTER AND PROPRIETOR, (in statute for publication of process). 37 Cal. 458.

PRINTS, (defined). 7 Otto (U. S.) 368.

PRIOR.—Chief of a covenant, next in dignity to an abbot.

PRIOR IN DATE, (equivalent to "prior in time"). 3 Day (Conn.) 58, 66.

PRIOR PETENS.—The person first applying.—

PRIORI PETENTI.—To the person first applying.—

In probate practice, where there are several persons equally entitled to a grant of administration (*e. g.* next of kin of the same degree), the rule of the court is to make the grant *priori petenti*, to the first applicant. Browne Prob. Pr. 174; Coote Prob. Pr. 178, 180.

Prior tempore potior iure: He who is first in time is preferred in law.

PRIOR TO THE PASSAGE, (construed). 1 Iowa 435.

PRIORITY.—

§ 1. When two persons have similar rights in respect of the same subject-matter, but one is entitled to exercise his right to the exclusion of the other, he is said to have priority.

§ 2. The question is chiefly of importance with reference to securities on property; thus, if A. mortgages his land first to B. by a deposit of title-deeds, then to C. by a formal deed of mortgage, and then to D. by an agreement of charge, the question arises who is entitled to realize his security

in priority to the others. The general rule is that he who has the first mortgage and has the legal estate has priority over all other incumbrancers, and that where there is a prior equitable mortgage, a subsequent incumbrancer who obtains the legal estate without notice of the equitable mortgage, is entitled to priority over it. In the case supposed, therefore, C. would have priority over B. unless he had notice of B's charge, or was guilty of gross negligence, *e. g.* in omitting to inquire as to the deeds. (*Hewitt v. Loosemore*, 9 Hare 449; *Hopgood v. Ernest*, 3 DeG. J. & S. 116; *Fish. Mort.* 593, 869. See **CONSOLIDATION OF SECURITIES; TACKING**.) Priority is of various kinds according as it arises by the doctrines of tacking (*q. v.*), of consolidation (*q. v.*), or of salvage (*q. v.*), by simple priority in point of time or date, or by a statutory provision (statutory priority), as under the various registration acts, which usually make instruments take effect in the order of date in which they are registered.

§ 3. Important questions as to priority also arise in administering estates and assets, where the contending claims of creditors, legatees, &c., have to be considered. See **ADMINISTRATION**, § 2; **LEGACY**.

PRIORITY OF CHARGE, (in a statute). 4 Barn. & Ad. 137.

PRISAGE.—An ancient hereditary revenue of the crown, consisting in the right to take a certain quantity from cargoes of wine imported into England. In Edward's I.'s reign it was converted into a pecuniary duty called "butlerage." (2 Steph. Com. 561.) The present duties on wines are regulated by the Customs Acts. See **CIVIL LIST; CONSOLIDATED FUND; CUSTOMS**.

PRISEL EN AUTER LIEU.—A taking in another place. A plea in abatement to a writ of replevin.

PRISON CHARGES, (in a statute). 4 Me. 79.

PRISON, LIMITS OF THE, (in a statute). 3 Mass. 90.

PRISONAM FRAGMENTIBUS, STATUTE DE.—1 Edw. II.; 2 Reeves Hist. Eng. Law c. xii, p. 290.

PRISON-BREACH, or prison-breaking, is where a person, being lawfully detained on a charge of or under sentence for an offense, breaks out of the place where he is detained, *i. e.* escapes with force. The degree of the offense and its punishment varies with that of the offense.

for which he was detained. Steph. Cr. Dig. 91; Russ. Cr. & M. 577.

PRISONER.—One who is deprived of his liberty. A prisoner *on matter of record* is he who, being present in court, is by the court committed to prison; a prisoner *on arrest* is one apprehended by a sheriff or other lawful officer.

PRISONER, (in a statute). 1 Robt. (N. Y.) 705.

PRISONER AT THE BAR.—An accused person while on trial before the court, is so called.

PRISONER OF WAR.—One who has been captured while fighting under the banner of some State. He is a prisoner, although never confined in a prison. —*Bouvier*.

PRISONS.—Places in which persons are kept either for safe custody until they have been tried for an offense for which they stand charged, or for punishment after being tried and convicted. The general administration of prisons is vested, in England, in the home secretary, assisted by prison commissioners appointed by the crown, and each prison is further under the more immediate jurisdiction of a visiting committee of the justices of the peace or magistrates in the district. 3 Steph. Com. 121. See **HABEAS CORPUS**; **IMPRISONMENT**; **JAIL**; **PENAL SERVITUDE**.

Prus vitis laboravimus, nunc legibus (4 Inst. 76): We labored first with vices, now with laws.

PRIVATE.—Affecting or belonging to an individual, as distinct from the public.

PRIVATE, (of a statute). 43 N. Y. 10.

PRIVATE ACTS, (defined). 13 Otto (U. S.) 454.

— (what are not). 1 Anstr. 281.

— (distinguished from "public acts"). 3 Crim. L. Mag. 185, 186.

PRIVATE ACTS OF PARLIAMENT, or THE LEGISLATURE.—

Acts operating upon particular persons and private concerns of which the courts formerly were not bound to take notice if they were not formally pleaded. They were so called to distinguish them from public or general acts which apply to the

whole community, and of which the courts must take judicial notice. A private act is either local or personal, a local act having for its object the interests of some particular locality, and a personal act relating to the interests of some private individual, *e. g.* an act for the management of his private estates.

PRIVATE BILL.—See **BILL**, § 1.

PRIVATE BILL OFFICE.—An office of the English parliament where the business of obtaining private acts of parliament is conducted.

PRIVATE CHAPELS.—See **CHAPEL**, § 2; **PROPRIETARY CHAPELS**.

PRIVATE CHARITY, (devise to). Turn. & R. 260.

PRIVATE CONVERSATION, (between husband and wife, what is). 113 Mass. 157.

PRIVATE CORPORATION.—One founded by or the stock of which is owned by private persons, such as a college, bank, insurance company or railroad company.

PRIVATE CORPORATION, (what is). 8 Wheat (U. S.) 480.

— (distinguished from "public corporation"). 4 Wheat. (U. S.) 659; 13 Wend. (N. Y.) 337; 3 Wheel. Am. C. L. 441; Ang. & A. Corp. 23; 2 Kent Com. 275.

PRIVATE ELEMOSYNARY CORPORATION (what constitutes). 19 Ind. 407.

PRIVATE EXAMINATION.—See **ACKNOWLEDGMENT**, § 1.

PRIVATE EXAMINATION APART FROM HER HUSBAND, (in a statute). 4 Halst. (N. J.) 233.

PRIVATE EXPENSES, (in articles of copartner ship). 1 Johns. (N. Y.) Ch. 467.

PRIVATE HOUSE, (a boarding-house is). 3 Brewst. (Pa.) 344.

PRIVATE LANDS, (in a statute). 1 Moo. & P. 195.

PRIVATE NUISANCE.—Anything done to the injury or annoyance of the lands, tenements or hereditaments of another. 3 Bl. Com. 216.

PRIVATE NUISANCE, (defined). 80 N. Y. 579, 582.

PRIVATE, or CIVIL LAW.—See **LAW**, § 7.

PRIVATE PERSON.—An individual who is not the incumbent of an office.

PRIVATE PERSON, (in a statute). 22 N. Y. 245.

PRIVATE POND, (what is not). 93 Pa. St. 459.

PRIVATE PROPERTY, (what is not). 17 Wend. (N. Y.) 571.

PRIVATE PROPERTY TAKEN FOR PUBLIC USE, (in bill of rights). 14 Gray (Mass.) 155.

PRIVATE RIGHTS.—Those rights which relate either to the person or to personal or real property of a particular individual or class of individuals.

PRIVATE RIVER, (right of fishing in). 4 Burr. 2162.

PRIVATE ROAD, (what is). 70 Pa. St. 210.

PRIVATE SECURITIES, (in a statute). 47 Md. 286.

PRIVATE STATUTE.—*See* PRIVATE ACT; STATUTE.

PRIVATE STATUTE, (defined). 1 Bl. Com. 86.
— (what is). 5 Com. Dig. 323.

PRIVATE WAY.—*See* WAY.

PRIVATE WAY, (distinguished from "public way"). 8 Wheel. Am. C. L. 391; 3 T. R. 265.

— (right to, by prescription). 4 Mau. & Sel. 387.

— (when is subject to be used by the public). 103 Mass. 202.

— (in a statute). 103 Mass. 1, 4.

PRIVATE WAY BY GRANT, (distinguished from one of necessity). 19 Wend. (N. Y.) 507.

PRIVATE WRONGS.—Civil injuries (*q. v.*) *See, also*, TORT.

PRIVATEERS.—Ships commissioned by letters of marque to exercise general reprisals (*see* REPRISALS). Privateering was practically abolished as between European nations by the declaration of Paris, in 1856. Man. Int. Law 156. *See* LETTERS OF MARQUE.

PRIVATEERS, (distinguished from ships sailing under letters of marque). 13 Mass. 127.

PRIVATES, (in indictment). 56 Ind. 323.

Privatio præsupponit habitum (2 Rolle 419): A deprivation presupposes a possession.

PRIVATION.—A taking away or withdrawing. Co. Litt. 239.

Privatis pactionibus non dubium est non lædi jus cæterorum (D. 2, 15, 3): There is no doubt that the rights of third persons are not prejudiced by private agreements.

Privatorum conventio juri publico non derogat (9 Co. 141; D. 50, 17, 45, § 1): The agreement of private individuals does not derogate from the public right (law).

VOL. II.

Privatum commodum publico cedit (Jenk. Cent. 223): Private good yields to public.

Privatum in commodum publico bono pensatur (Jenk. Cent. 85): Private loss is compensated by public good.

PRIVEMENT ENCEINTE.—Pregnancy in its earlier stages before quickening.

PRIVIES.—Those who are partakers or have an interest in any action or thing, or any relation to another. They are of six kinds: (1) Privies of blood, such as the heir to his ancestor. (2) Privies in representation, as executors or administrators to their deceased testator or intestate. (3) Privies in estate, as grantor and grantee, lessor and lessee, assignor and assignee, &c. (4) Privities, in respect of contract, are personal privities, and extend only to the persons of the lessor and lessee. (5) Privies, in respect of estate and contract, as where the lessee assigns his interest, but the contract between lessor and lessee continues, the lessor not having accepted of the assignee. (6) Privies in law, as the lord by escheat, a tenant by the curtesy, or in dower, the incumbent of a benefice, a husband suing or defending in right of his wife, &c.

PRIVIES, (defined). 4 Sawy. (U. S.) 292, 300; 15 Barb. (N. Y.) 583; 1 Saund. 319, *n. (c)*.

— (who are). 24 How. (N. Y.) Pr. 246.

PRIVIES IN ESTATE, (who are not). 19 Am. Dec. 71.

PRIVIGNUS.—In the civil law, the son of a husband or wife by a former marriage; a step-son. D. 38, 10, 4, 6.

PRIVILEGE.—

§ 1. A privilege is an exceptional or extraordinary right, immunity or exemption. It may exist in respect of a person, or in respect of a thing.

§ 2. **Personal.**—With reference to the persons who enjoy them, personal privileges are of various kinds: the principal, in English law, are those belonging to the royal family, the houses of parliament (May Parl. L. 64), peers, ambassadors, barristers, solicitors and clergymen.

§ 3. With reference to the nature of the right or exemption, the principal privileges are—the freedom from arrest enjoyed by ambassadors, ministers (*q. v.*) and peers (Sm. Ac. 105); the exemption from serving on juries enjoyed by peers,

members of parliament, ministers, barristers, solicitors, attorneys, clergymen, medical practitioners, &c.; the privileges exempting attorneys and physicians from giving discovery or evidence of matters communicated to them by their clients and patients in professional confidence, &c. *Dan. Ch. Pr.* 488. *See* CONFIDENTIAL COMMUNICATIONS.

§ 4. With reference to their duration, privileges are either permanent or temporary; thus, a member of parliament or of congress, is privileged from arrest on civil process during the sitting of the house; a barrister has a similar privilege while he is on circuit, (*Sm. Ac.* 107; 2 *Steph. Com.* 341,) or an attorney while attending court.

§ 5. *Real*.—In respect of things: Some chattels are privileged from distress (*q. v.*), and some from being taken in execution (*q. v.*) *And see* GOODS.

§ 6. A document is privileged from production when its production cannot be compelled under the ordinary order for production in an action (*see* PRODUCTION); the principal instances of privileged documents are documents of title and confidential communications (*q. v.*) *Bustros v. White*, 1 *Q. B. D.* 423; *Webb v. East*, 5 *Ex. D.* 108.

§ 7. *Privileged statement*.—A statement is said to be privileged when it is made under such circumstances that it does not render the person making it liable to proceedings for slander or libel, although it would have that effect in the absence of those circumstances. The principal instances of privileged statements are those made between a physician or counsel and the patient or client; by a witness in the course of his examination, (*Seaman v. Netherclift*, 1 *C. P. D.* 540,) or a counsel in his speech; those made where it is the duty of the person making it to do so, *e. g.* where a master is giving the character of a servant, or where the matter is of public interest; this last is sometimes called "privilege by reason of the occasion." Thus, statements made in the course of legal proceedings and parliamentary debates are privileged, as are also fair reports or comments on such proceedings, (*Purcell v. Towler*, 2 *C. P. D.* 215;

Millicich v. Lloyd's, *Week. N.* (1877) 36; *Webb v. East*, 5 *Ex. D.* 108,) and fair criticisms on literary publications and works of art. (*Underh. Torts* 97.) The privilege is said to be absolute where the intention of the speaker or writer is immaterial, (as in the case of judges, members of parliament, &c.,) or qualified, when it does not excuse malice in fact, as in the case of statements made by a person in the discharge of some public or private duty, or in the conduct of his own affairs. *Shortt Copyr.* 427 *et seq.*; *Clark v. Molyneux*, 3 *Q. B. D.* 237; *Stevens v. Sampson*, 5 *Ex. D.* 53; *Capital and Counties Bank v. Henty*, 5 *C. P. D.* 514. *See* MALICE, § 2.

PRIVILEGE, (defined). 123 *Mass.* 515, 519; 3 *Sneed (Tenn.)* 120; 4 *Id.* 193; 1 *Pinn. (Wis.)* 119.

PRIVILEGE AND PRIMAGE, (in marine contract). 1 *Stark.* 210.

PRIVILEGE FROM ARREST.—*See* PRIVILEGE, § 2.

PRIVILEGE, IN LIEU OF, (in an agreement). 4 *Campb.* 385.

PRIVILEGE OF A HIGHWAY, (grant of, carries an easement only). 9 *Allen (Mass.)* 159.

PRIVILEGE OF RESHIPING, (in a bill of lading). 6 *McLean (U. S.)* 296.

PRIVILEGE OF WITNESSES.—

Usually, witnesses (and deponents in affidavits) may refuse upon the ground of privilege to answer questions tending to criminate them, or to disgrace them, or to subject them to civil proceedings for a penalty or a forfeiture. *See* CRIMINATE.

PRIVILEGE, PLEA OF.—*See* LIBEL; PRIVILEGE, § 7; SLANDER.

PRIVILEGE, WRIT OF.—A process to enforce or maintain a privilege.—*Cowell*.

PRIVILEGED COMMUNICATION.—*See* CONFIDENTIAL COMMUNICATIONS; PRIVILEGE, § 7.

PRIVILEGED COMMUNICATION, (defined). 10 *Com. B.* 583.

— (what is). 6 *Blackf. (Ind.)* 255; 8 *Id.* 155; 36 *How. (N. Y.) Pr.* 532; 3 *Sandf. (N. Y.)* 341; 12 *Wend. (N. Y.)* 545; 21 *Id.* 319; 22 *Id.* 410; 23 *Id.* 26; 2 *Com. B.* 569; *Cro. Jac.* 90; 3 *Q. B.* 5, 11.

PRIVILEGED COPYHOLDS.—Customary copyholds.

PRIVILEGED DEBTS.—Debts which an executor may pay in preference.

to all others, such as sickbed and funeral expenses, the expenses of mourning, servants' wages, &c. See DEBT, §§ 7, 12.

PRIVILEGED DEED.—In the Scotch law, an instrument, e. g. a testament, in the execution of which certain statutory formalities usually required are dispensed with.—*Bell Dict.*

PRIVILEGED PUBLICATION, (what is). L. R. 4 Q. B. 73.

PRIVILEGED VILLENAGE.—Villain sorage. 1 Steph. Com. (7 edit.) 188, 223. See SOCCAGE, § 3.

PRIVILEGES, (defined). 3 Head (Tenn.) 413. — (in fourteenth amendment to United States constitution). 37 Iowa 145.

PRIVILEGES AND AFFURTEANCES, (are sufficient to pass a right of way). 14 Mass. 54.

PRIVILEGES AND IMMUNITIES, (in constitution of United States). 47 Md. 203.

PRIVILEGES OF THE SHORES, (defined). 123 Mass. 515, 519.

PRIVILEGIA, or LAWS EX POST FACTO.—Laws which are enacted after an act is committed, declaring it for the first time to have been a crime, and inflicting a punishment upon the person who has committed it.

Of such laws the great Roman orator thus speaks: *Vetant leges sacratæ, vetant duodecim tabulæ, leges privatis hominibus irrogari; id enim est privilegium. Nemo unquam tulit, nihil est crudelius, nihil perniciosius, nihil quod minus hæc civitas ferre possit.* Cicero Pro Domo 17.

Privilegia quæ re vera sunt in præjudicio reipublicæ, magis tamen habent speciosa frontispicia, et boni publici prætextum, quam bonæ et legales concessiones; sed prætextu liciti non debet admitti illicitum (11 Co. 88): Privileges which are truly in prejudice of public good, have, however, a more specious front and pretext of public good, than good and legal grants; but under pretext of legality, that which is illegal ought not to be admitted.

PRIVILEGIUM CLERICALE.—The benefit of clergy (*q. v.*)

Privilegium est beneficium personale, et extinguitur cum persona (3 Bulst. 8): A privilege is a personal benefit, and dies with the person.

Privilegium est quasi privata lex (2 Bulst. 189): Privilege is, as it were, a private law.

Privilegium non valet contra rempublicam (Bac. Max. 25): A privilege avails not against public good.

PRIVILEGIUM, PROPERTY PROPTER.—A qualified property in ani-

mals *feræ naturæ*, i. e. a privilege of hunting, taking and killing them, in exclusion of others. 2 Bl. Com. 394; 2 Steph. Com. (7 edit.) 9.

PRIVITY—PRIVY.—

§ 1. Originally "privity" signified a friend or acquaintance, as opposed to a stranger,* and hence privity means knowledge. Thus, the rule is that "when any deed is altered in a point material by the plaintiff himself, or by any stranger without the privity of the obligee, . . . the deed thereby becomes void." (*Pigot's Case*, 11 Co. 27.) In the special verdict in this case it is said that the alteration was made "*sine notitiâ, Angliæ* the privity," of the plaintiff. See ALTERATION OF WRITTEN INSTRUMENTS.

§ 2. In its secondary sense, privity denotes a peculiar relation in which a person stands, either to a transaction or to some other person. The persons standing in such relation are called privies. Thus, in the law of fines, the heirs and successors of the parties to a fine were said to be privies to it, and were bound by it as if they had been parties, as opposed to strangers, i. e. persons who were neither parties nor privies. (*Watk. Conv.* 316; 2 Inst 516; *Shep. Touch.* 21. See Co. Litt. 219 b. See FINE, § 9.) The principal kinds of privity of practical interest are as follows:

§ 3. **Contract.**—Privity of contract is the relation which exists between the immediate parties to a contract, as where A. agrees with B. to pay him \$100. Privity of contract is necessary to enable one person to sue another on a contract. Thus, if A. agrees with B. that he will pay C. \$100, C. cannot bring an action against A. on the contract for want of privity between them. *Moore v. Bushell*, 27 L. J. Ex. 8.

§ 4. **Estate.**—Privity of estate is that which exists between lessor and lessee, tenant for life and remainderman or reversioner, &c., and their respective assignees, and between joint tenants and coparceners. Privity of estate is required for a release by enlargement. Thus, if A. grants land to B. for life, and B. grants a lease to C., and then A. executes a release

* Thus, in the Grand Coutumier the form of oath for bailiffs is "qu'ils feront et rendront

droit à toutes personnes grans et petits, privés ou estrangers, sans acception de personne" (p. 160).

to C., this is void as a release, because there is no privity between A. and C. (Co. Litt. 272b.) But (*semble*) such a release might operate as a grant by A. to C. if the intention were clear. (See GRANT, § 2 n.) Its more important consequence is to make the assignee of a lease liable to the rent and covenants contained in it, although there is no privity of contract between him and the lessor. Wms. Real Prop. 393; Webb v. Russell, 3 T. R. 394.

§ 5. **Blood.**—Privity of blood exists between an heir and his ancestor (privity in blood inheritable), and between coparceners. This privity was formerly of importance in the law of descent cast (*q. v.*) Co. Litt. 271a, 242a; 2 Inst. 516; 8 Co. 42b.

§ 6. **Representation, and succession.**—Privity in representation exists between a testator and his executors, and privity in succession between a predecessor and a successor, in the case of a corporation sole. Either kind is also called "privity in right." *Termes de la Ley*; Perk. Prof. Bk. § 833 *et seq.*; Co. Litt. 271a, 214b.

§ 7. **Tenure.**—Privity in tenure is that which exists between a lord and a tenant who holds of him by a service. *Termes de la Ley*; Co. Litt. 271a. See TENURE.

§ 8. **Person.**—In the old books, privity of person is said to exist (1) between trustee and *cestui que trust*, (Fearne Rem. 291, n. (h); Watk. Conv. 214. See, also, the case discussed by Littleton, § 462 *et seq.*;) (2) between husband and wife, (Co. Litt. 354b;) (3) between coparceners. *Id.* 169a.

§ 9. **Possession.**—Privity of possession exists between joint tenants, tenants in common and coparceners. The last, therefore, have a three-fold privity, and the first a two-fold privity. Co. Litt. 169a. *Supra*, §§ 4, 8.

§ 10. **In deed—In law.**—Privity in deed is a privity created by the act or consent of the party, as opposed to privity in law, which is one created by the law. Co. Litt. 90b, 172a, 209a; Perk. §§ 831, 832. For other points connected with privity, see *Termes de la Ley*; Co. Litt. 46b; 3 Co. 1, 23; 8 *Id.* 42b; Staunf. P. C. & Fr. 25a.

PRIVITY, (defined). 41 Iowa 513; 3 Co. 23.

PRIVITY OF ESTATE.—See PRIVILEGE, § 4.

PRIVY.—See PRIVIES; PRIVACY.

PRIVY COUNCIL.—The principal council of the English crown, consisting of such persons as are nominated by the crown to the office. Nominally the council is supposed to advise the crown on affairs of state, but practically that duty is fulfilled by a select body called "the cabinet," who are members of either house of parliament and hold the principal offices of state. Those members of the Privy Council (other than the cabinet) who perform active duties are subdivided into committees, of which the principal are the Board of Trade (*q. v.*), the Education Committee and the Judicial Committee (*q. v.*) (Cox Inst. 258; 2 Steph. Com. 457.) In the case of a large number of Privy Councilors the office is purely nominal; it confers the title of "Right Honorable."

PRIVY PURSE.—The income set apart for the sovereign's personal use. See CIVIL LIST.

PRIVY SEAL.—A seal employed by the crown, chiefly as an authority to the lord chancellor to affix the great seal to certain documents, *e. g.* letters-patent. The privy seal is affixed either to the bill or draft of the letters-patent (see BILL, § 4), or to a warrant which sets them forth and directs the lord chancellor to have them passed under the great seal (*q. v.*) 1 Steph. Com. 619.

PRIVY SEAL, (defined). 2 Bl. Com. 347.

PRIVY TITHES.—Small tithes.

PRIVY VERDICT.—When the judge has left or adjourned the court, and the jury being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the judge out of court, this is called a "privy verdict;" but if the judge have adjourned the court to his own lodgings, and there receive the verdict, it is a public, and not a private verdict. Privy verdicts are now almost wholly disused. 4 Broom & H. Com. 461; 3 Steph. Com. (7 edit.) 551 n.

PRIVY VERDICT, (defined). 3 Bl. Com. 377.

PRIZE—PRIZE COURTS.—"Prize" is property captured from an enemy at sea. (See CAPTURE, § 4.) Prize Courts are courts specially constituted for the purpose of deciding questions of maritime capture in time of war according to international law. In England the jurisdiction in such questions formerly belonged to the Court of Admiralty sitting as a Prize Court, (Man. Int. Law 472; Naval Prize Act, 1864. As to the practice in prize cases, see *Id.* and 3 Phillim. Int. L.,) and is now vested in

the High Court of Justice, (Judicature Act, 1873, § 16,) and in America in the United States District Courts. *See* IN PERSONAM, § 3.

PRIZE GOODS, (defined). 9 Cranch (U. S.) 244, 284.

PRIZE LAW.—The body of rules of jurisprudence and enactments which govern the rights acquired by captors in vessels and cargoes captured in war, the condemnation of the property, sale, distribution of proceeds, &c.; the law of maritime captures.—*Abbott*.

PRIZE LOGS, (defined). 18 Me. 314.

PRIZE MONEY.—The proceeds of property captured as prize, distributable, under authority of the prize court of the captor's nation, among the officers and crew of the capturing vessel.

PRIZE OF WAR, (what is not). 4 Sawy. (U. S.) 501.

PRIZE-FIGHTING. — Pugilism has been ruled to be illegal in itself (4 Steph. Com. (7 edit.) 252 n.), but a learned and ingenious treatise has been written to prove that it cannot be indicted under the head of riot, affray, mayhem, assault, or in any other manner, admitting that, if death ensue, it is manslaughter, not death *per infortunium* or *se defendendo*. (*See* Brandt's Habet.) As to the liability of aiders and abettors of prize-fights, *see* Regina v. Coney, 3 Crim. L. Mag. 647.

PRO.—For; in respect of; on account of; in behalf of. The introductory word of many Latin phrases, among which are the following—

PRO CONFESSO.—For confessed; as confessed. Under the practice in Chancery, when it appears that a defendant in a suit has absconded to avoid being served with the bill, or absconded after being served and without putting in an answer, the court may order the bill to be taken *pro confesso* (as if the defendant had confessed or admitted the truth of it), either immediately or at some future time. The cause is accordingly set down for hearing and such decree made as the court thinks just. Stat. 11 Geo. IV. and 1 Will. IV. c. 36, § 3; Dan. Ch. Pr. 381, 449.

PRO CONSILIO.—For counsel given. An annuity *pro consilio* amounts to a condition, but

in a feoffment or lease for life, &c., it is the consideration, and does not amount to a condition; for the state of the land by the feoffment is executed, and the grant of the annuity is executory Plowd. 412.

PRO CORPORE REGNI.—In behalf of the realm.

PRO EO QUOD.—For this that. Used in old Latin declarations.

PRO FALSO CLAMORE SUO.—A nominal amercement of a plaintiff for *his false claim*, which used to be inserted in a judgment for the defendant. Obsolete.

PRO FORMA.—As a matter of form.

PRO HAC VICE.—For this occasion.

PRO INDIVISO.—As undivided. The possession or occupation of lands or tenements belonging to two or more persons, whereof none knows his several portion, as coparceners before partition.

PRO INTERESSE SUO.—Where sequestrators acting under a writ of sequestration have seized property apparently belonging to the party in default, any person claiming that it belongs to him must make an application to the court for an inquiry as to the nature of his interest therein. This is called an inquiry *pro interesse suo*. In the English Chancery Division the inquiry is conducted in the usual way before the chief clerk, and he makes his certificate of the result. If it is in favor of the claimant, the court directs the sequestrators to deliver up the property to him. (Dan. Ch. Pr. 1057.) The same rule applies where property is taken possession of by a receiver. *Id.* 1744. *See* CERTIFICATE, p. 185, n. (3); INQUIRY, § 2.

PRO LÆSIONE FIDEL.—*See* LÆSIONE FIDEL.

PRO MAJORI CAUTELA.—Literally "from greater caution;" as where some provision is inserted in a legal instrument, which the law would itself imply as being just and equitable under the circumstances, such a provision is said to be inserted only *pro majori cautela*. And there are many other like uses of the phrase.

PRO PARTIBUS LIBERANDIS.—An ancient writ for partition of lands between co-heirs.—*Reg. Orig.* 316.

PRO QUERENTE.—For the plaintiff.

PRO RATA.—This phrase means "proportionately." Thus, in case of a deficiency of assets to pay legacies in full, they are said (being general legacies) to abate *pro rata*, i. e. to diminish proportionately, as well in regard to the deficiency of assets as in regard to their respective amounts. So, under certain circumstances,

the payment of freight is regulated according to the proportion of the voyage performed, *i. e. pro rata itineris peracti*. See **FREIGHT**, § 1.

PRO RATA, (defined). Hob. 88.
 — (in an agreement). 122 Mass. 310, 316.

PRO RE NATA.—To meet the emergency.

PRO SALUTE ANIMÆ.—For the good of his soul. All prosecutions in the ecclesiastical courts are *pro salute animæ*; hence it will not be a temporal damage founding an action for slander, that the words spoken put any one in danger of such a suit. 3 Steph. Com. (7 edit.) 309 n., 437; 4 Id. 207.

PRO TANTO.—For so much; to that extent. See 17 Serg. & R. (Pa.) 400.

PROAMITA.—A great paternal aunt, the sister of one's grandfather.

PROAMITA MAGNA.—A great-great-aunt.

PROAVIA.—A great-grandmother.

PROAVUNCULUS.—A great-uncle.

PROAVUS.—A great-grandfather.

PROBABLE.—Likely to be true; having an appearance of truth.

PROBABLE CAUSE.—This term as used in connection with actions for malicious prosecution, means the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. *Wheeler v. Nesbitt*, 24 How. (U. S.) 544.

PROBABLE CAUSE, (defined). 7 Cranch (U. S.) 339; 7 Otto (U. S.) 645; 16 Pet. (U. S.) 342, 366; 3 Wash. (U. S.) 31; 70 Ill. 544; 72 Id. 262; 77 Id. 32; 23 Ind. 67; 1 Me. 135; 3 Id. 805; 37 Md. 282, 369; 24 How. (N. Y.) 544; 8 Hun (N. Y.) 178; 45 Tex. 539; 44 Vt. 124; 9 Am. Dec. 691 n.; 3 Crim. Law Mag. 209.
 — (what constitutes). 3 Wall. (U. S.) 155; 30 Ind. 457; 2 Barn. & Ad. 845.
 — (equivalent to "reasonable cause"). 22 Vt. 655.

— (when a question of law). 8 Taunt. 182; 1 T. R. 519; 1 Stark. Ev. 414.
 — (when a question of fact). 1 Stark. Ev. 425.

PROBABLE CAUSE FOR PROSECUTION, (what is). 39 Mich. 222.

PROBABLE INJURY, (in verdict of jury). 4 Munf. (Va.) 535.

PROBABLY, (in verdict of jury). 1 Munf. (Va.) 405.

Probandi necessitas incumbit illi qui agit: The necessity of proving lies upon him who commences proceedings.

PROBATE.—**LATIN**: *probare*, to prove.

§ 1. In American law, the probate of a will is the proof before the proper court or officer, together with the approval of such court or officer, that a paper offered as the last will and testament of a deceased person is authentic and sufficient. Also, the exemplified copy and accompanying certificates given by such court or officer in testimony of such approval.

§ 2. In English law.—A certificate granted by the Probate Division of the High Court of Justice to the effect that the will of a certain person has been proved and registered in the court, and that administration of his effects has been granted to the executor proving the will, he having first sworn faithfully to administer them and to exhibit a true inventory and render a just account when called on. This certificate is on a piece of parchment annexed to a copy of the will and codicils or other testamentary papers, if any, engrossed on parchment. (Browne Prob. Pr. 142; Wms. Ex. 277 *et seq.*) The whole is commonly referred to as the probate, but inaccurately, the certificate being the probate, and the copy of the will being the "probate copy." When a grant of probate has been made, the clerk of the seat makes an entry or memorandum of the fact; this (or a copy of it) is called the "probate act." Coote Prob. Pr. (6 edit.) 219.

§ 3. Probate duty.—A probate granted in respect of an estate above the value of £100 is liable to a stamp duty varying with the value of the estate. Stats. 44 Vict. c. 12; 43 Vict. c. 14, repealing 27 and 28 Vict. c. 56; Wms. Pers. Prop. 389. As to these duties, see note to § 5, *infra*.

Probate may be granted either in solemn form or in common form.

§ 4. In solemn form.—Probate in solemn form is only employed when there is or is likely to be a dispute as to the validity of the will, and in such a case the person who wishes its validity to be established commences an action against the person who disputes it. The action proceeds as to pleadings, trial, &c., in the same way as an ordinary action, (see the forms Judicature Act, 1875, schedule, App. A, pt. ii., § v. App. C., form 23; if the plaintiff makes out his case, the court pronounces for the validity of the will, and the executor may then take probate of it as if it had not been disputed. (Coote Prob. Pr. 250, 308.) As a general rule probate in solemn form is conclusive on all who are parties to the proceedings or cognizant of them. Browne Prob. Pr. 101. See **ESTABLISHMENT OF WILLS**.

§ 5. In common form.—Probate in common form is that "form which is slight and summary for ordinary and undisputed cases." (Sir W. Scott in *Duke of Portland v. Bingham*,

1 Hagg. Cons. 158, cited Browne 101.) It is granted in ordinary cases as a matter of course on the executor swearing and filing (1) an affidavit called the "oath of executor," or "oath of office," by which he swears that the will annexed to the affidavit is "the true and original last will and testament" of the testator, and that he will faithfully administer the estate, (as to granting probate of a lost will of which no copy or draft is in existence, *see* Sugden v. Lord St. Leonards, 1 P. D. 154; as to fac-simile probates, *see* Browne 126;) and (2) an affidavit for inland revenue; before the new Probate Duty Act came into operation, this affidavit was to the effect that the gross value of the testator's property did not exceed a certain sum, the stamp on the probate being regulated by this. Browne 143; Coote 31 *et seq.**

§ 6. Probate with power reserved.—Double probate.—Where several persons are named as executors it is not necessary for all to prove together; one may prove, power being reserved to the others to prove subsequently. If they do, another probate, called a "double probate," must issue. (Browne Prob. Pr. 148.) As to limited grants of probate, *see* GRANT, § 5 *et seq.*

§ 7. "Probate business" is used as a general term to include all business relating to the granting and revoking of probates and letters of administration, both in contested and uncontested cases. (*See* ACTION, § 11.) The non-contentious business is transacted in the registries of the Probate, Divorce and Admiralty Division of the High Court (*q. v.*); the contentious business is, as a rule, transacted in the same division, (*See* Pinner v. Hunt, Week. N. (1877) 150,) or, where the estate is below a certain value, in the county court of the district where the deceased had fixed his place of abode. Poll. C. C. Pr. 331; Browne Prob. Pr. 321.

PROBATE APPEAL, (what is not). 68 Me. 412.

PROBATE BOND, (in a statute). 12 Mass. 369.

PROBATE COURT.—*See* COURT OF PROBATE.

*In the case of probates and letters of administration granted before the 1st of April, 1880, the rate of duty is regulated by the Stat. 55 Geo. III. c. 184; 5 and 6 Vict. c. 79, § 23; 22 and 23 Vict. c. 36, § 1; and 27 and 28 Vict. c. 36. Under these acts the duty was paid by a stamp on the grant, and was calculated on the whole value of the personal estate, without deducting debts (except in the case of mortgage debts charged on leasehold property), but after payment of the debts, a return could be obtained of a proportionate part of the duty. The rates of duties were altered by the Customs and Inland Revenue Act, 1880, applying to grants made between the 1st of April, 1880, and the 1st of June, 1881. (Wms. Pers. Prop. 389, *et seq.*) Grants made after the latter date are subject to the provisions of the Customs and Inland Revenue Act, 1881, which fixes the rate of duty at £1 for every £50 on estates between £100 and £500; £1 5s. for every £50 on estates between £500 and £1,000; and £3 for every £100 on estates over £1,000. Estates under £100 are exempt from duty, as before. In the case of

PROBATE, DIVORCE and ADMIRALTY DIVISION.—

§ 1. That Division of the English High Court of Justice which exercises jurisdiction in matters formerly within the exclusive cognizance of the Court of Probate, the Court for Divorce and Matrimonial Causes, and the High Court of Admiralty. (Judicature Act, 1873, § 34. *See* those titles.) It consists of two judges, one of whom is called the "President," (*Id.* § 31. The existing judges are the judge of the old Probate and Divorce Courts, who is president of the division, and the judge of the old Admiralty Court,) and of a number of registrars (*q. v.*)

§ 2. Probate.—The jurisdiction of probate matters is of two kinds, contentious and non-contentious. As to the contentious business, *see* ACTION, § 11. The non-contentious business comprises all "common form business," *i. e.* the business of obtaining probate and administration (*q. v.*) where there is no contention as to the right thereto, including the passing of probates and administrations in contentious cases when the contest is terminated, and also the business of lodging caveats. Court of Probate Act, 1857, § 2. *See* CAVEAT, § 2; WARNING.

§ 3. Divorce.—The jurisdiction in divorce and matrimonial matters is exercised in pronouncing decrees of nullity or dissolution of marriage, judicial separation, restitution of conjugal rights and jactitation of marriage (*q. v.*), and in dealing with subsidiary matters arising in suits for the above purposes. (Browne Div. 1. *See* ALIMONY; SETTLEMENT.) In these matters the former practice of the Divorce Court is retained, so that the president still hears most matters in the first instance, and an appeal from him has in many cases still to be brought to the "full court," and not to the Court of Appeal. *Id.* 316; Westhead v. Westhead, 2 P. D. 1; Wallis v. Wallis, *Id.* 141.†

§ 4. Admiralty.—The jurisdiction in admiralty matters is exercised in questions as to the possession, mortgage, damage, salvage and towage of ships, and claims in respect of neces-

persons dying on and after the 1st of June, 1881, where the gross value of the estate does not exceed £300, the duty is 30s., which includes legacy and succession duty. (§ 33 *et seq.*) The act further makes an important alteration—(1) by allowing debts (other than voluntary debts) and funeral expenses to be deducted from the value of the estate before payment of the duty (§ 28), and (2) in making the duty payable on the affidavit for inland revenue instead of on the grant. A certificate is written on the grant to show that the duty has been paid. The affidavit for inland revenue verifies an account of the estate, a schedule of debts and funeral expenses, and states the net amount of the estate. (*See* the forms, Trevor's Taxes on Succession, 12 *et seq.*) Duties at the same rate as probate duties are now payable on property comprised in accounts deliverable under § 38 of the Customs and Inland Revenue Act, 1881.

†This rule has been abolished by the Judicature Act, 1881 (§ 9), which also makes the judgment of the Court of Appeal in matrimonial causes final in many cases.

aries and wages. See those titles, and ACTION, §§ 12, 13.

PROBATE DUTY.—See PROBATE, §§ 3, 5 n.

PROBATIO.—Proof; more particularly direct, as distinguished from indirect or circumstantial evidence.

PROBATIO PLENA.—See PLENA PROBATIO.

PROBATION.—Proof; evidence; testimony. Also, the taking a person or thing on trial.

PROBATIONER.—One who is upon trial.

Probationes debent esse evidentes, scil. perspicuæ et faciles intelligi (Co. Litt. 283): Proofs ought to be evident, to wit, perspicuous and easily understood.

Probatis extremis, præsumuntur media: The extremes being proved, the intermediate proceedings are presumed.

PROBATOR.—An examiner; an accuser or approver, or one who undertakes to prove a crime charged upon another. See 4 Steph. Com. (7 edit.) 394.

PROBATORY TERM.—A term for taking testimony in an English Court of Admiralty.

PROBATUM EST.—It is tried or proved.

PROBI ET LEGALES HOMINES.—Good and lawful men. Men competent to act as jurors.

PROCEDENDO.—A prerogative writ which issues (1) when the judge of an inferior court delays the parties to a proceeding before him, by not giving judgment for one side or the other, when he ought to do so; or (2) when a cause has been removed from an inferior court to a superior court improperly or on insufficient grounds, and the superior court thinks fit to remit or remove it back to the inferior court. In the former class of cases the writ of *mandamus* (*q. v.*) is more frequently used. 3 Steph. Com. 629; Fish. Dig. 4670. See WRIT.

PROCEDENDO ON AID PRAYER.—If one pray in aid of the crown in real action, and aid be granted, it shall be awarded that he sue to the sovereign in Chancery, and the justices in the Common Pleas shall stay until this writ of *procedendo de loquela* come to them. So also, on a personal action.—*F. N. B.* 154.

PROCEDURE.—This word is commonly opposed to the sum of legal principles which constitute the substance of the law, and denotes the body of rules whether of practice or of pleading or of evidence, whereby rights are effectuated through the successful application of the proper remedies. See PRACTICE.

PROCEED, (equivalent to "issue"). 17 Ga. 211, 213.

PROCEED, NOT TO, (in a stipulation, equivalent to "not to sue"). 57 Ga. 140.

PROCEED TO SEA, (when a ship is said to). 9 Serg. & R. (Pa.) 154.

— (in a statute). L. R. 4 A. & E. 161.

PROCEEDING, (defined). Clarke (N. Y.) 9; 1 Duer (N. Y.) 617; 3 How. (N. Y.) Pr. 369; 7 Neb. 50.

— (in a statute). 23 Ala. 323; 1 Harr. (N. J.) 487; 2 East 213; 7 Ch. D. 371; L. R. 2 C. P. 532.

PROCEEDING IN A CAUSE, (what is). 15 Wend. (N. Y.) 105.

PROCEEDING IN COURT, (in the code). 3 Sandf. (N. Y.) 740.

PROCEEDING IN A SUIT, (defined). 11 N. Y. Leg. Obs. 119.

— (what is). 1 Nev. & M. 355.

PROCEEDINGS, (defined). 9 N. Y. 369.

— (in a statute). L. R. 3 Q. B. 170; 3 Com. Dig. 48 n.

PROCEEDINGS IN A SUIT, (what are). 9 Pet. (U. S.) 368.

PROCEEDINGS IN COURT, (what are not). 48 Barb. (N. Y.) 116, 119.

PROCEEDINGS, OTHER, (in a statute). 1 East 304.

PROCEEDINGS SHALL BE HAD, (in a statute). 31 Wis. 117.

PROCEEDINGS UPON A JUDGMENT, (in a statute). 16 Pet. (U. S.) 303, 313.

PROCEEDS.—The sum, amount or value of goods, &c., sold, or converted into money.

PROCEEDS, (defined). 35 Superior (N. Y.) 208.

— (in a policy of insurance). 1 Hall (N. Y.) 166, 171.

— (in a statute). 123 Mass. 15.

PROCEEDS AND INTEREST, (in a deed of trust). 1 Bli. N. S. 662.

PROCEEDS, HOME, (in an insurance policy). 8 Wend. (N. Y.) 161.

PROCEEDS, NET, (in an order of court). 5 East 22.

PROCEEDS OF ALL MY REAL ESTATE, (in a will). 4 Gill & J. (Md.) 323.

PROCEEDS OF AN ESTATE, (devise of third part of). 3 Rawle (Pa.) 489.

PROCIRES.—Chief magistrates; "*Domus Procerum*," House of Lords.

PROCES VERBAL.—In the French law, an authentic minute of an official act or statement of acts.

PROCESS.—A form of proceeding taken in a court of justice for the purpose of giving compulsory effect to its jurisdiction. (Sm. Ac. 43.) The process of the various courts of record consists of writs, summons, warrants, &c. (*q. v.*), and hence the terms "process" and "writ" are often used synonymously, as when we speak of service of process.

§ 2. **Civil actions.**—In civil actions, process is of two kinds: (1) Against a defendant, and this again is of two kinds, viz., (a) process to compel him to appear, now consisting of a writ of summons (*q. v.*), and (b) process of execution, by which the judgment, decree, &c., is executed or carried into effect. (Co. Litt. 289a. See EXECUTE, § 3.) (2) Process against persons not parties to the action, *e. g.* process to summon jurors, witnesses, &c. Finch Law 436.

§ 3. **Foreign attachment.**—Process in a proceeding in foreign attachment (*q. v.*) denotes the attachment paper served upon the garnishee. Brand. For. Att. 78.

§ 4. **Privy Council.**—In the practice of the English Privy Council in ecclesiastical appeals, "process" means an official copy of the whole proceedings and proofs of the court below, which is transmitted to the registry of the Court of Appeal by the registrar of the court below in obedience to an order or requisition requiring him so to do, called a "monition for process," issued by the Court of Appeal. Macph. Jud. Com. 173.

§ 5. **Criminal proceedings.**—In criminal proceedings, process means those writs or warrants which are issued to bring in a person to answer an indictment which has been found against him. Summary process consists of the writs of *venire facias*, *distringas* and *capias ad respondendum* (*q. v.*), though a justice's warrant is now more commonly used. (See WARRANT.) If summary process is ineffectual, process of outlawry (*q. v.*) may be issued in England, but not in America. 4 Steph. Com. 881; Arch. Cr. Pl. 81 *et seq.*

§ 6. **In common law practice.**—Process in common law actions is either original or judicial. The former (which is so called because at one time it commenced with the original writ issued out of Chancery) has for its object to compel the defendant to appear (see WRIT). Original process against either the person or property of the defendant is called

"single process;" when it is against both it is called "mixed."

§ 7. **Judicial process** is that which issues out of the common law court, either when the original writ is returned or without an original being issued at all. Since original writs fell into disuse, an action is commenced by process issued out of the common law court to compel the defendant's appearance, to compel him to give bail, &c., and this is called "mesne process;" the term also includes other kinds of process, *e. g.* jury process, or writs to compel the attendance of jurors.

§ 8. **Writs used to revive an action** or remove it into another court, or the like, were formerly called judicial process in the nature of new originals. Finch Law 343 *et seq.*

§ 9. **In patent law.**—The art or mode of producing a certain result. A process cannot be patented as such, but it may be under the term "useful art." For the several senses in which the word is used in this connection, see ABBOTT; BOUVIER.

PROCESS, (defined). 5 Day (Conn.) 193, 199; 27 La. Ann. 457; 7 Com. Dig. 120.

— (synonymous with "art"). 4 Fish. (U. S.) Pat. Cas. 175.

— (a fee-bill is). 7 Ill. 870.

— (a warrant is). 33 Cal. 292.

— (a summons is not). 15 Fla. 410; 12

Minn. 80, 255; 6 Oreg. 71.

— (in a statute). 1 Paine (U. S.) 368; 1 Hill (N. Y.) 155; 20 Johns. (N. Y.) 141; 1 U. S. L. J. 90.

— (in State constitution). 11 Wis. 70.

— (service of). 70 Ill. 258.

PROCESS OF LAW.—See DUE PROCESS OF LAW, and cases there cited.

PROCESS ROLL.—A roll used for the entry of process to save the statute of limitations. 1 Tidd Pr. 161, 162.

PROCESS, SUMMARY, (must be sealed). 1 Brev. (S. C.) 81.

PROCESSIONING.—A proceeding to determine boundaries, in use in North Carolina and Tennessee, similar in all respects to the English perambulation (*q. v.*)

PROCESSUM CONTINUANDO.—A writ for the continuance of process after the death of the chief justice or other justices in the commission ofoyer and terminer.—Reg. Orig. 128.

PROCHEIN AMY.—As an infant cannot legally sue in his own name, the

suit or action must be brought by his *prochein amy*, i. e. some friend who is willing to take upon himself the trouble and responsibility. Co. Litt. 135 b n.; Cro. Car. 131. See GUARDIAN AD LITEM; INFANT; NEXT FRIEND.

PROCHEIN AMY, (distinguished from "guardian"). Cro. Jac. 640.

PROCHEIN AVOIDANCE.—Next vacancy. A power to appoint a minister to a church when it shall next become void.

PROCHRONISM.—An error in chronology; dating a thing before it happened.

PROCLAMATION.—

§ 1. **In American law**.—(1) A public notice in print or writing, given by the chief executive officer of the United States, or of a State or city, of some act done by the government, or to be done or required to be done by the people; either in execution of the law or otherwise. (2) The declaration of the crier at the opening or closing of a court.

§ 2. **In English law**, the power of issuing proclamations is part of the royal prerogative. Such proclamations have a binding force when they are grounded upon and enforce the laws of the realm. 2 Steph. Com. 507. See ORDER, § 4.

§ 3. A proclamation is valid in law if published in the *London Gazette*, (Crown Office Act, 1877, § 3,) and a copy of the *Gazette* is *prima facie* evidence of the proclamation; it may also be proved by a certified or Queen's printer's copy. Documentary Evidence Act, 1868.

PROCLAMATION, FINE WITH.—

To render a fine more universally public and less liable to be levied by fraud or covin, it was directed by 4 Hen. VII. c. 24 (in confirmation of a previous statute), that a fine after engrossing should be openly and solemnly read and proclaimed in court (during which all pleas should cease) sixteen times, viz., four times in the term in which it was made, and four times in each of the three succeeding terms, which was reduced to once in each term by 31 Eliz. c. 2, and these proclamations were indorsed on the record. Abolished by 3 and 4 Will. IV. c. 74. The 4 Hen. VII. c. 24 was entirely repealed by the 26 and 27 Vict. c. 125.—*Wharton*.

PROCLAMATION OF EXIGENTS.

—See EXIGENT.

PROCLAMATION OF REBELLION.

—A writ whereby a man not appearing on his *subpoena*, or an attachment in Chancery, is deputed and declared a rebel if he render not himself by the day assigned. It is abolished.

PROCLAMATION OF RECUSANTS.

—A proceeding whereby such persons

were formerly convicted on their non-appearance at the assizes. 29 Eliz. c. 6; 3 Jac. I. c. 4.

PROCLAMATIONS BY LORD OF MANOR.—Upon the death of a copyholder, the lord makes three proclamations for the heir or devisee to come forward, in order to be admitted, and pay to the lord the fine to which he has become entitled; and failing the heir or devisee to come forward, the lord may thereafter seize the lands *quousque*.

PROCLAMATOR.—An officer of the English Court of Common Pleas.

PROCONSULES.—Justices in eyre.—*Cowell*.

PROCTORS.—

§ 1. In the English Ecclesiastical, and English and American Admiralty Courts, proctors discharge duties similar to those of solicitors and attorneys in other courts. (Phillim. Ecc. L. 1219. "Procurator est qui aliena negotia mandatu domini administrat." Dig iii. 1. "Item et ad litem futuram . . . dari potest." *Id.* 3.) They are, or used to be, empowered to institute or withdraw proceedings by an instrument called a "proxy," signed by the litigant, attested, and deposited in the registry of the court. Phillim. 1220.

§ 2. By Stat. 33 and 34 Vict. c. 23, § 20, attorneys and solicitors were empowered to practice in the ecclesiastical courts. By the Judicature Act, 1873, § 87, proctors of the then existing Admiralty Court are to be called "solicitors of the Supreme Court."

PROCTORS OF THE CLERGY.—

They who are chosen and appointed to appear for cathedral or other collegiate churches; as also for the common clergy of every diocese, to sit in the convocation house in the time of parliament.

Procuratio est exhibitio sumptuum necessariorum facta praelatis, qui dioceses peragrand, ecclesias subiectas visitant (Lav. 1): Procuration is the providing necessities for the bishops, who, in traveling through their dioceses, visit the churches subject to them.

PROCURATION.—An agency; the administration of the business of another; also money which parish priests pay yearly to the bishop or archdeacon, *ratione visitationis*; these are also called *proxies*, and it is said that there are three sorts—*ratione visitationis, consuetudinis, et pacti*. Hard. 180.

Bills of exchange may be drawn, accepted, or indorsed by procuration, i. e.

by an agent who has an authority for such a purpose. See Byles Bills (11 edit.) 31 *et seq.*

PROCURATION, (bill of exchange accepted by). 7 Barn. & C. 278.

PROCURATION FEE.—A sum of money or commission taken by scriveners on effecting loans of money.

PROCURATION FEE, (defined). 4 Bl. Com. 157.

Procuracionem adversus nulla est præscriptio (Dav. 6): There is no prescription against procuration.

PROCURATOR.—In its most general signification, means any one who has received a charge, duty, or trust for another. Thus, the proxies of the lords in parliament are, in the old books, called "*procuratores*;" so, also, a vicar or lieutenant was so called, and even the bishops were sometimes called "*procuratores ecclesiarum*," and "proctor" is merely an abbreviation of procurator. The word "procurator" was also used for him who gathered the profits of a benefice for another man, and the word "procuracy" for the writing or instrument which authorized the procurator to act.—*Cowell; Termes de la Ley.* In Roman law the procurator was a simple attorney in an action or prosecution—of a less formal kind than the *cognitor*.

PROCURATOR FISCAL.—The public prosecutor in Scotland, who institutes the preliminary inquiry into crime within his district, and acts generally under the instructions of the lord advocate. See *Bell Dict.*

PROCURATORES ECCLESIAE PAROCHIALIS.—Church wardens. *Paroch. Antiq.* 562.

PROCURATORIUM.—The instrument by which any person or community constituted or delegated their proctor to represent them in any court or cause.

PROCURATORY OF RESIGNATION.—A proceeding in the law of Scotland, by which a vassal authorizes the fee to be returned to his superior, either to remain the property of the superior, in which case it is said to be a resignation *ad remanentiam*, or for the purpose of the superior's giving out the fee to a new vassal or to the former vassal and a new series of heirs, which is termed a resignation *in favorem*. It is somewhat analogous to the surrender of copyholds in England. See *Bell Dict.*

PROCURE, (defined). 49 Cal. 9, 11.

— (in a pleading). 12 Abb. (N. Y.) Pr. N. s. 187, 190.

PROCURE, IF HE SHALL, (in contract for a dead). 5 Mass. 74.

PROCURE OR CORRUPT, (in a statute). 3 Ad. & E. 51, 55.

PROCURERS.—Persons procuring the defilement of girls under twenty-one years are so called; and when they effect their object by false pretenses are liable, in England, to be imprisoned for any term not exceeding two years, with or without hard labor. (24 and 25 Vict. c. 100, § 49.) They are similarly punishable under the statutes of the several States.

PROCUREUR-GENERAL, or IMPERIAL.—In the French law, an officer of the Imperial Court, who either personally or by his deputy prosecutes every one who is accused of a crime according to the forms of French law. His functions appear to be confined to preparing the case for trial at the assizes, assisting in that trial, demanding the sentence in case of a conviction, and being present at the delivery of the sentence. He has a general superintendence over the officers of police and of the *juges d'instruction*, and he requires from the *procureur du roi* a general report once in every three months.—*Brown.*

PROCURING, ENTICING AND PERSUADING, (in a declaration). Willes 577, 582.

PROCURING GOODS TO BE TAKEN IN EXECUTION, (what is not). 1 Car. & M. 458.

PRODES HOMINES.—The barons of the realm.

PRODIGUS.—In the Roman law, a spendthrift whose extravagance was such as to render him incapable of managing his own affairs, and to require the appointment of a guardian of his estate for his protection.

PRODITION.—Treason; treachery.

PRODITOR.—A traitor.

PRODITORIE.—Treasonably.

PRODUCE BROKER, (defined). 1 Abb. (U.S.) 470.

PRODUCE OF A FARM, (does not include beef raised and killed on it). 6 Watts & S. (Pa.) 269, 279.

PRODUCE OF A FUND, (devise of without limitation as to continuance will pass the principal). 2 Beas. (N. J.) 121.

PRODUCE OF REAL ESTATE, (sold under power in a will passes by a residuary clause with personal estate). 7 Ves. 279.

PRODUCE OF REAL OR PERSONAL ESTATE, (devise of passes the estate). 2 P. Wms. 194.

PRODUCE OF THE SOIL, (grant of). Com. L. & T. 75.

PRODUCE TITLE DEEDS, (covenant to): 1 Sim. & S. 449.

PRODUCENT.—The party calling a witness under the old system of the ecclesiastical courts.

PRODUCING, NOT, (equivalent to "not having"). Burr. 1476, 1477.

PRODUCT, (defined). 8 Taunt. 431.

— (what is not). 2 Moo. 491, 495.

PRODUCTION.—

§ 1. **Production of documents.**—The superior courts have a general power to order a party to an action or other proceeding to produce to the court any documents in his possession or power relating to the matters in question in the action, and the court may deal with the documents so produced as it thinks right. Such a court also has power to order a party to produce any documents in his possession for the inspection of any other party, unless they are privileged from production. *Bustros v. White*, 1 Q. B. D. 423. See **DISCOVERY**; **INSPECTION**; **NOTICE TO PRODUCE**, § 2; **PRIVILEGE**, § 6.

§ 2. **Production of *cestui que vie*.**—Where a person is entitled to property in reversion or remainder expectant on the death of another person, and has reason to believe that that person (called the *cestui que vie*) is dead, and that his death is concealed, he may apply to the Chancery Division of the English High Court for an order directing the person in possession of the property to produce the *cestui que vie* to persons named by himself, or in case of non-production to them, the *cestui que vie* is ordered to be produced in open court or to commissioners appointed by the court, and on failure of production the applicant may take possession of the property as if the *cestui que vie* were actually dead. Stat. 6 Anne c. 18; Dan. Ch. Pr. 1909. See **CESTUI QUE VIE**.

PRODUCTIVE REAL ESTATE, (what is not). 3 Stockt. (N. J.) 476.

PROFANE SWEARING.—See **PROFANITY**.

PROFANITY.—An irreverent or disrespectful use of the name of God, or that of either member of the Holy Trinity. This offense, when publicly committed, is punished as a statutory misdemeanor in the several States. See **BLASPHEMY**.

PROFER.—An offer to endeavor to proceed in an action; also, the time appointed for the accounts of officers in the English Exchequer, which was twice a year. 3 and 4 Will. IV. c. 99, § 2.

PROFERT.—Under the common law practice, where a party to an action relies in his pleading on a deed under seal, to which he was party or privy, the deed has to be “shown forth,” or produced to the court. (Co. Litt. 35b, 225a; Shep. Touch. 73.) Hence the party in his pleading alleges that he brings the deed into court,

although it is not actually done. This is called *profert in curia*, and entitles the opposite party to “oyer” of the deed. (3 Bl. Com. App. See **OYER**.) Profert and oyer were abolished, in England, by the Common Law Procedure Act, 1852, § 55.

PROFESSED—PROFESSION.—

§ 1. Formerly a man was said to be professed or “entered and professed in religion” when he had entered a religious order, taken the habit of religion and vowed three things, “obedience, willful poverty, and perpetual chastity.” (Co. Litt. 132a.) A nun was also said to be professed. Profession operated as a civil death. (*Ib.*; Litt. § 200. See **DEATH**, § 1.) Since the Reformation, however, religious profession is not recognized by the law. 1 Bl. Com. 133.

§ 2. “Professional privilege” is the privilege which exempts barristers and attorneys from disclosing matters confided to them in their professional capacity by clients. See **CONFIDENTIAL COMMUNICATIONS**; **PRIVILEGE**, § 7.

PROFESSION.—Calling; vocation; known employment; divinity, physic and law are called the “learned professions.”

PROFESSION, (what constitutes). 7 Watts & S. (Pa.) 330.

PROFESSIONAL EMPLOYMENT, (defined). 41 Mich. 153.

PROFESSIONAL GAMBLER, (in crimes act). 59 Ind. 173.

PROFIT.—

§ 1. In its primary sense, profit signifies advantage or gain in money or in money's worth. Thus, in an action for infringement of a patent or copyright, the plaintiff generally has his election whether the defendant shall be ordered to pay him the damages caused to him by the infringement, or the profits which the defendant has made by the wrongful use of the patent or copyright. *Neilson v. Belts*. L. R. 5 H. L. 1. See **ACCOUNT**, § 8; **INQUIRY**, § 2; **PARTNERSHIP**.

§ 2. In the law of real property “profit” is used in a special sense to denote a produce or part of the soil of land. Therefore, “if a man seised of lands in fee by his deed granteth to another the profit of those lands, to have and to hold to him and his hoires, and maketh livery *secundum formam chartæ*, the whole land itselfe doth passe: for what is the land but the profits thereof; for thereby vesture, herbage, trees, mines and all whatsoever parcell of

that land doth passe." (Co. Litt. 4b.) So, in the old books, an easement is defined to be a privilege, without profit, which one neighbor hath of another.—*Termes de la Ley*.

§ 3. In render.—In prender.—Profits in this sense are of three classes: (1) Profits lying in render consist of rents, dues and services rendered to a lord by his tenant. They are so called because it is the duty of the tenant to pay or tender them to the lord; as opposed to (2) profits à prender, which are rights of taking the produce or part of the soil from the land of another person; and (3) the casual profits which accrue to a lord from his tenants "by chance and unlooked for," such as escheats. (Co. Litt. 92b; *Elt. Com.* 2.) "Rent" is sometimes opposed to profit, as when it is said that rent issues out of the profits of the land, and that a man cannot reserve as rent part of the annual profits of the land, such as the vesture or herbage. Co. Litt. 141b, 142a.

§ 4. Profits à prender consist of rights of common (*see* COMMON), and rights of sole or several pasture, vesture and herbage. (Wms. Com. 18. *See* PASTURE; VESTURE.) The custom of tin-bounding (*q. v.*) is also sometimes treated as a profit à prender. (Hall Prof. à Pr. 223.) The right of taking water from a well or stream on another's land is not a profit à prender, but an easement. (*Ib.*; *Race v. Ward*, 4 El. & B. 702.) A profit à prender may be claimed by grant or prescription, or, in the case of copyholders, by custom. *See* PRESCRIPTION; PRESCRIPTION ACT.

PROFIT, (in crimes act). 6 Blackf. (Ind.) 529.

PROFIT AND LOSS.—The gain or loss arising from goods bought or sold, or from carrying on any other business, the former of which, in book-keeping, is placed on the creditor's side, the latter on the debtor's side. Net profit is the gain made by selling goods at a price beyond what they cost the seller, and beyond all costs and charges.—*Wharton*.

PROFIT, FOR ANY PURPOSE OF, (in a statute). 11 Eng. L. & Eq. 414.

PROFIT, OFFICES OF, (are necessarily offices of trust). 6 Blackf. (Ind.) 529.

PROFITS.—*See* PROFIT.

PROFITS, (defined). 15 Minn. 519.

— (what are). 10 Johns. (N. Y.) 226.

— (distinguished from "income"). 4 Hill (N. Y.) 20.

PROFITS, (as meaning "annual profits"). 2 P. Wms. 13, 19; 2 Ves. 481.

— (when participation in, will not create partnership). 15 Serg. & R. (Pa.) 137.

— (when a portion should be raised by perception of). 2 P. Wms. 666.

— (mortgagee in possession chargeable with). 84 Ill. 497.

— (in statute of wills). 9 Cow. (N. Y.) 438.

— (in a will). 6 Johns. (N. Y.) Ch. 73; 1 Atk. 550; 1 Bro. Ch. 311; 1 Ch. Cas. 176; 2 Id. 205; 1 Cro. 159, 190; 1 Meriv. 232; 5 Mod. 63; 1 P. Wms. 502; 1 Vern. 104, 256; 2 Id. 26, 310; 2 Ves. & B. 65; 8 Com. Dig. 1006.

PROFITS A PRENDER.—*See* PROFIT, § 4.

PROFITS A PRENDER, (distinguished from "easements"). 70 N. Y. 419, 421.

PROFITS AND BENEFITS, (in a devise). 36 Ohio St. 21.

PROFITS AND RENTS, (in articles of marriage settlement). 1 Atk. 506.

PROFITS, COMMISSION ON, (distinguished from "interest in profits"). 7 Wheel. Am. C. L. 207.

PROFITS FOR THE YEAR, (in articles of association). 16 Ch. D. 353.

PROFITS, GENERAL, (distinguished from "rents and profits"). Dick. 607.

PROFITS MESNE.—*See* MESNE PROFITS.

PROFITS OF A BUSINESS, (defined). 4 Otto (U. S.) 500.

PROFITS OF LAND, (what are). 5 Day (Conn.) 477.

— (distinguished from those of personal estate). 2 Atk. 476.

— (grant of, passes the land itself). 4 Watts (Pa.) 131.

— (include profits arising from a sale or mortgage). 1 P. Wms. 418; 3 Id. 8.

— (devise of). 1 Ves. Sr. 171.

— (covenant to pay is a lien on the land). 1 Ves. 477.

PROFITS, or DAMAGES.—*See* PROFIT, § 1.

PROFITS OR INCOME, (in a statute). 18 Wend. (N. Y.) 606.

PROFITS, or INTEREST.—Where trustees use the trust funds in trade, the *cestuis que trustent* have the option in each year of taking either the profits made from such use in the trade during that year or interest at the rate of five per cent. per annum. (*Docker v. Somes*, 2 M. & K. 655.) In taking partnership accounts, regard will be had to the articles of copartnership in determining what is interest and what profits; and the proper mode of ascertaining profits is to ascertain the

value of the partnership property, and then to deduct the original (or added) capital of the partners (with or without interest thereon), according as the articles or the case may require. (*Dinham v. Bradford*, L. R. 5 Ch. 519.)—*Brown*.

PROFITS OUT OF LAND, (in a devise). 10 Mod. 94.

PROFITS, SHARING.—*See* PARTNERSHIP ACT.

PROFITS USED IN CONSTRUCTION, (in internal revenue act). 3 Otto (U. S.) 225.

PROGENER.—A grandson-in-law. D. 38, 10, 4, 6.

PROGENITORS, (as equivalent to "predecessors"). Alc. & N. 508; Wilberf. Stat. L. 132.

Prohibetur ne quis faciat in suo quod nocere possit alieno, et sic utere tuo ut alienum non laedas (9 Co. 59): It is prohibited for any to do that on his own property which may injure another's, and so use your own that you do not hurt another's.

PROHIBITED FROM, (in an insurance policy). 101 Mass. 551.

PROHIBITED TRADE, (in an insurance policy). 15 Wend. (N. Y.) 9.

PROHIBITIO DE VASTO, DIRECTA PARTI.—A judicial writ which used to be addressed to a tenant, prohibiting him from waste, pending suit. Reg. Jud. 21; Moo. 917.

PROHIBITION.—

§ 1. The writ of prohibition is a writ issuing out of a superior court to restrain an inferior court within the limits of its jurisdiction. It is granted in all cases where an inferior court exceeds its powers, either by acting where it has no jurisdiction, or where, having a primary jurisdiction, it takes upon itself the decision of something not included within its jurisdiction. Poll. C. C. Pr. 249; *Mayor of London v. Cox*, L. R. 2 H. L. 254. *See MacKonochie v. Lord Penzance*, 6 App. Cas. 424.

§ 2. Prohibitions are of three kinds in England: (1) An absolute prohibition is peremptory, and wholly ties up the inferior jurisdiction, but if the superior court afterwards comes to the conclusion that the matter relied on is not a sufficient ground for prohibition, a writ of consultation may be awarded, by which the cause is remanded to the inferior court (3 Bl. Com. 114); this latter writ seems in practice to be only awarded in ecclesiastical cases. (*See CONSULTATION*.) (2) A temporary prohibition (sometimes called a "prohibition *quousque*") is opera-

tive only until a particular act is done, and is *ipso facto* discharged on the act being done (Poll. C. C. Pr. 251.) (3) A limited or partial prohibition (sometimes called a "prohibition *quoad*") extends only to that part of the proceeding which exceeds the jurisdiction of the inferior court, allowing it to proceed as to the residue. *Id.* 252; *Phillim. Ecc. L.* 1438; *Rog. Ecc. L.* 813.

§ 3. Practice.—The writ is applied for by motion (Poll. C. C. Pr. 256); if the defendant appears and contests the matter, the court may, where the question involved is doubtful, order the plaintiff to declare in prohibition, *i. e.* deliver a declaration (*q. v.*), to which the defendant pleads or demurs, and so on; the matter is then argued or tried in the same way as an ordinary action, and judgment given for the successful party. 3 Steph. Com. 636; *Worthington v. Jeffries*, L. R. 10 C. P. 379; *South Eastern Rail. Co. v. Railway Comm.*, 5 Q. B. D. 217.

PROHIBITION, WRIT OF, (office of). 2 Hill (N. Y.) 367.

PROJECTED STREET, (in a deed). 114 Mass. 538.

PROJET.—The draft of a proposed treaty or convention.—*Wharton*.

Prolem ante matrimonium natam, ita ut post legitimam, lex civilis succedere facit in hæreditate parentum; sed prolem, quam matrimonium non parit, succedere non sinit lex Anglorum (Fort. c. 39): The civil law permits the offspring born before marriage (provided such offspring be afterwards legitimized) to be the heirs of their parents; but the law of the English does not suffer the offspring not produced by the marriage to succeed.

PROLES.—Progeny; offspring.

PROLETARIUS.—In the civil law, a person who had no property to be taxed, but paid a tax only on account of his children.—*Wharton*.

PROLICIDE.—The destruction of human offspring. It is either feticide or infanticide (*qq. v.*)—*Dungl.*

PROLIXITY.—The allegation of facts at unnecessary length, either in a pleading or affidavit. The party offending may be ordered to pay the costs thereby occasioned, or, in the case of an affidavit, it may be ordered to be taken off the file.

PROLOCUTOR.—The foreman; the speaker of an ecclesiastical convocation.

PROLOCUTOR OF THE CONVOCATION HOUSE.—An officer chosen by ecclesiastical persons publicly assembled in convocation by virtue of the sovereign's writ; at every parliament there are two prolocutors, one of the upper house of convocation, the other of

the lower house, the latter of whom is chosen by the lower house and presented to the bishops of the upper house as their *prolocutor*, *i. e.* the person by whom the lower house of convocation intends to deliver its resolutions to the upper house, and have its own house especially ordered and governed; his office is to cause the clerk to call the names of such as are of that house, when he sees cause, to read all things propounded, gather suffrages, &c.—*Wharton*.

PROLYTÆ.—Students of the civil law during the fifth and last year of their studies.

PROMATERTERA.—A great maternal aunt; the sister of one's grandmother.

PROMATERTERA MAGNA.—A great-great-aunt.

PROMISE.—Promises are of two kinds:

§ 1. A true promise is the expression of an intention to do or forbear from some act, made by one person (the promisor) to another (the promisee). Expressions in the form of promises, but reserving an option as to their performance, and illusory promises (*e. g.* a promise by me to pay B. such a sum as I think proper), are not true promises. *Leake Cont. 9; Taylor v. Brewer, 1 Mau. & Sel. 290; Poll. Cont. 5, 26.*

§ 2. True promises are either express or implied; thus, if I request A. to lend me \$50, and he does so, a promise by me to repay it is implied. *See EXPRESS.*

§ 3. **Contractual promise—Mutual promises.**—To have legal effect a promise must either be under seal, when it forms a covenant (*q. v.*), or must form part of a contract, *i. e.* be made in consideration of something done or to be done in return by the promisee. (*See CONSIDERATION; CONTRACTS.*) When that consideration consists of another promise each party is both a promisor and a promisee, and the contract consists of mutual promises; thus, in an ordinary contract of sale, the vendor's promise to deliver the goods is in consideration of the purchaser's promise to pay for them, and *vice versa*.

§ 4. **Independent—Dependent—Concurrent.**—Mutual promises are said to be "independent" where either party may sue the other for the breach of his promise and where it is no excuse for the party sued to allege a breach by the plaintiff of his own promise (*see APPORTION, § 3*);

"dependent," when the performance of one promise depends on the performance of the other, and, therefore, until the prior condition is performed, the other party is not liable on his promise: as where A. promised B. to keep some buildings in repair on condition of their being first put into repair by B.; "concurrent," where both promises are mutually dependent: thus, where A. agrees to sell property to B., neither can sue the other without showing that he has performed or is ready to perform his part of the contract. *Leake Cont. 344 et seq., citing Jones v. Barkley, 2 Doug. 684.*

§ 5. **Fictitious promises**, sometimes called "implied promises," or "promises implied in law," occur in the case of those contracts which were invented to enable persons in certain cases to take advantage of the old rules of pleading peculiar to contracts, and which are not now of practical importance. *See CONTRACTS, § 5 et seq.*

PROMISE, (defined). 1 Den. (N. Y.) 226, 228. — (synonymous with "agree"). 17 Mass 131.

— (in a declaration in assumpsit). 10 Wend. (N. Y.) 487, 491.

PROMISE OF MARRIAGE.—*See BREACH, § 4.*

PROMISED, (in a declaration). 1 Chit. 619. — (not necessary in a declaration in assumpsit). 3 Mass. 160. — (in a will). Amb. 519.

PROMISEE.—One to whom a promise has been made.

PROMISSOR.—One who makes a promise.

PROMISSORY NOTE, or note of hand, is an absolute promise in writing, signed but not sealed, to pay a specified sum at a time therein limited, or on demand, or at sight, to a person therein named or designated, or to his order, or to the bearer. The person who signs the note is called the "maker." Promissory notes are negotiable or transferable in the same manner as bills of exchange (*q. v.*) *Byles Bills 5; Stat. 3 and 4 Anne c. 9.*

The legal effect of making a note is an absolute contract by the maker to pay the note. As to the effect of an indorsement, *see BILL OF EXCHANGE, § 4.* The rules are

the same in both cases, the maker of a note being in the same position as the acceptor of a bill. Byles Bills 3.

PROMISSORY NOTE, (defined). 5 Den. (N. Y.) 484.

— (what constitutes). 13 How. (U. S.) 218; 5 McLean (U. S.) 153; 6 Ala. 373; 22 *Id.* 43; 35 Cal. 118; 1 Ga. 319; 7 *Id.* 84; 19 Ill. 396; 37 *Id.* 137; 1 Ind. 289; 21 *Id.* 433; 22 *Id.* 88; 54 *Id.* 359, 363; 1 Kan. 23; 35 Me. 364; 2 Allen (Mass.) 165; 10 Gray (Mass.) 477, 483; 11 *Id.* 205; 2 Pick. (Mass.) 49; 7 Miss. 52; 9 Sm. & M. (Miss.) 457; 9 Mo. 845; 36 Barb. (N. Y.) 307; 10 Barn. & C. 123; 1 Car. & K. 35, 136; 1 Car. & M. 590; 2 Car. & P. 559; 1 Dav. & M. 331; 7 Jur. 1130; 13 L. J. Q. B. N. s. 90; 5 Q. B. 199.

— (what is not). 5 Cow. (N. Y.) 186; 4 Barn. & Ald. 697.

— (the indorsement is no part of). 2 Mass. 397.

— (in an indictment). 124 Mass. 449; 125 *Id.* 384; 126 *Id.* 54, 252.

— (in a statute). 13 Pet. (U. S.) 176.

PROMISSORY OATHS.—See OATH, § 3.

PROMOTER, (of company, on a sale). 4 C. P. D. 396.

— (in a statute). L. R. 4 Ex. 303.

PROMOTERS.—

§ 1. **Of company**.—In the English law of joint stock companies, promoters are persons who join together for the purpose of procuring the formation of a company. Who are promoters in a given case depends on the circumstances. The commonest instance of a promoter occurs in the case of a person who causes a company to be formed in order that it may purchase some property, patent, &c., from him.* Promoters stand in a fiduciary position towards the company which they form. *Id.* See FIDUCIARY.

§ 2. **Promoters of undertaking**.—In the Lands Clauses Consolidation Acts "promoters" means the company, commissioners or private persons who are empowered to execute the works or undertaking authorized by the special act. Stat. 8 and 9 Vict. c. 18, § 2.

§ 3. **Promoter of ecclesiastical cause**.—In the practice of the Privy Council in ecclesiastical appeals, a promoter is a person who brings an appeal from the judgment of an inferior court. Macph. Jud. Com. 238. See OFFICE OF THE JUDGE.

PROMOVENT.—A plaintiff in a suit of *duplex querela* (q. v.) Willis v. Bishop of Oxford, 2 P. D. 192.

PROMULGATION.—Publication; open exhibition. The term is used principally in reference to public announcement of laws, State papers, treaties, &c.

PROMUTUUM.—In the civil law, a *quasi*-contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, delivered to him through mistake, contracts the obligation of restoring as much. It resembles the contract of *mutuum*. (1) That in both a sum of money or some fungible things are required. (2) That in both there must be a transfer of the property in the thing. (3) That in both there must be returned the same amount or quantity of the thing received.—Wharton.

PRONEPOS.—A great-grandson.

PRONEPTIS.—A great-granddaughter.

PRONOTARY.—First notary. See PRÆTHONOTARIES.

PRONUNCIATION.—A sentence or decree.

PRONURUS.—The wife of a great-grandson.

PROOF.—

§ 1. In the law of evidence, an allegation of fact is said to be proved when the tribunal is convinced of its truth, and the evidence by which that result is produced is called the "proof." See Best Ev. 9.

§ 2. **Burden of proof**.—Where a person who makes an allegation is bound to prove it, the burden or *onus* of proof (*onus probandi*) is said to rest on him. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. See BURDEN OF PROOF; ET INCUMBIT PROBATIO, &c.

§ 3. **Shifting burden of proof**.—Where a person on whom the burden of proof lies, adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof; i. e. his allegation is taken to be true, unless his opponent adduces evidence to rebut the presumption. See EVIDENCE, § 4; PRESUMPTION.

§ 4. **Proof of witness**.—When evidence is to be given *viâ voce*, e. g. at the trial of an action, the attorney or solicitor of the party on whose behalf a witness is to be called, usually sees the witness beforehand, and takes down a statement of the facts on which he is able to give evidence. This statement is called, in England, the "proof of the witness." A copy of it is furnished to the counsel of the party for his guidance in examining the witness.

§ 5. **Admiralty proofs**.—In English admiralty practice, "proof" was equivalent to

*As to the question of promoter or no promoter, see New Sombbrero Phosphate Co. v. Er-langer, 5 Ch. D. 78; 3 App. Cas. 143; Twyeross v. Grant, 2 C. P. D. at pp. 503, 541; Emma

Silver Mining Co. v. Lewis, 4 *Id.* at p. 407; Bagnall v. Carlton, 6 Ch. D. 371. As to the liabilities of promoters, see Lind. Part. 33; Thr. Jt. S. Co. 29, 46.

"evidence," and was divided into three kinds: proofs by affidavit, by written depositions, and by oral examination of witnesses in open court. (Admiralty Rules 78; Wms. & B. Adm. 260.) The rules as to evidence in admiralty actions are now the same as in other actions. Rules of Court xxxvii.

§ 6. **Bankruptcy.**—In bankruptcy, "proof" denotes not only the operation of proving the existence of a debt owing from the bankrupt's estate, but also the affidavit, declaration, &c., by which debts are usually proved; and hence to "prove against the estate" means to bring forward a claim in that way. An ordinary proof is an affidavit by the creditor to the effect that the bankrupt was at the date of the order of adjudication, and still is, justly and truly indebted to the creditor, stating the amount and the consideration for the debt, and whether the creditor holds any security for it. *See* CREDITOR, § 3; DEBT, § 11; SECURITY.

§ 7. **Double proof.**—Formerly there was a rule in English bankruptcy practice, that if a person was liable in respect of distinct contracts—either as member of two or more distinct firms, composed in whole or in part of the same individuals; or as a sole contractor and also as member of a firm—then the creditors under those contracts could not prove against the estates of the two firms in the one case, or against the several estate of the sole contractor and the joint estate of his firm in the other case, but could only prove against one estate. This rule against double proof was abolished by the Bankruptcy Act, 1869. (§ 36; Robs. Bankr. 619; *Ex parte* Honey, L. R. 7 Ch. 178.) But if a firm is carrying on business in England and abroad, and its property abroad is divided among its creditors, those of them who prove against the estate in England must give credit for what they have received abroad. *Ex parte* Banco de Portugal, 11 Ch. D. 317; 5 App. Cas. 161.

§ 8. **Expunging and reducing proofs.**—When a proof has been admitted by the trustee, it may afterwards happen that circumstances are disclosed which, if known at the time of proof, would have excluded the creditor from the right to prove, wholly or in part; or circumstances may arise after proof so as materially to change the state of the debt, and in these cases it becomes necessary either to expunge the proof, *i. e.* to reject it retrospectively, as if it had never been made; or to reduce it, *i. e.* reduce the amount on which the creditor is to receive dividends, as if he had originally proved for the smaller amount. Robs. Bankr. 178, 328.

§ 9. **Proof of will.**—An executor or other proponent is said to prove a will when he obtains probate of it. *See* PROBATE.

PROOF, (defined). 3 Bos. & P. 531; Hob. 92, 217, 219.

PROOF, (distinguished from "evidence"). 31 Cal. 201.

— (synonymous with "evidence"). 10 S. C. 268, 274.

— (of deed, by subscribing witness). 12 Abb. (N. Y.) Pr. 37; 14 *Id.* 466.

— (in by-laws of an insurance company). 4 Cow. (N. Y.) 380.

— (in policy of insurance). 2 Johns. (N. Y.) 136; 8 *Id.* 317; 3 Johns. (N. Y.) Cas. 224.

— (in a statute). 6 How. (N. Y.) Pr. 96; 3 Wend. (N. Y.) 389, 603.

PROOF, SATISFACTORY, (in a statute). 10 Johns. (N. Y.) 167; 11 *Id.* 175.

PROOF TO HIS SATISFACTION, (in a statute) 1 Wheel. Cr. Cas. 327.

PROPATRUS MAGNUS.—A great-great-uncle.

PROPER COUNTY, (in a statute). 7 Watts (Pa.) 245.

PROPER FEUDS.—The original and genuine feuds held by pure military service. 1 Steph. Com. (7 edit.) 180.

PROPER POOR OF A TOWN, (who are). 11 Mass. 380.

PROPERTY. — NORMAN-FRENCH: *proprete*, LATIN: *proprietas*, from *proprius*, one's own. (*See* OWNERSHIP.) For the history of property or ownership, see Laveleye de la Propriete; Maine Anc. Law ch. viii; Block Dict. de la Politique, s. v.; Mark. El. L. § 464 *et seq.*

§ 1. In its largest sense "property" signifies things and rights considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured. Property includes not only ownership, estates and interests in corporeal things, but also rights such as trade-marks, copyrights, patents and rights *in personam* capable of transfer or transmission, such as debts. *See* Birchall v. Pugin, L. R. 10 C. P. 397; 2 Aust. Juris. 817 *et seq.*

§ 2. Property is of two kinds, real and personal; as to which *see* those titles.

§ 3. "Property" also signifies a beneficial right in or to a thing. Sometimes the term is used as equivalent to "ownership;" as where we speak of the right of property as opposed to the right of possession (*q. v.*), (Co. Litt. 266a; Britt. 91a,) or where we speak of the property in the goods of a deceased person being vested in his executor. (Com. Dig., *Administrator*, B. 9.) The term is chiefly used in this sense with reference to chattels, "the ownership of a chattel personal is termed a *propriete*." Finch Law 176; *Termes de la Ley*, s. v.

Property in this sense is divided into general and special or qualified.

§ 4. General property is that "which every absolute owner hath." Co. Litt. 89a, 145b; Donald v Suckling, L. R. 1 Q. B. 606, 614; Coggs v. Bernard, 1 Sm. Lead. Cas. 188; Mark. El. L. § 529 *et seq.* See OWNERSHIP.

§ 5. Special—"Special property" has two meanings. First, it may mean that the subject-matter is incapable of being in the absolute ownership of any person. Thus, a man may have a property in deer in a park, hares or rabbits in a warren, fish in a pond, &c.; but it is only a special or qualified property, for if at any time they regain their natural liberty his property instantly ceases, unless they have *animus revertendi*. 2 Bl. Com. 391. See ANIMALS, § 2.

§ 6. Secondly, a person may have a special property in a thing in the sense that he can only put it to a particular use. Thus, in the case of a bailment (*q v.*), the bailee has a special property in the thing bailed, for he is only entitled to deal with it in accordance with the contract of bailment; but he can maintain an action in respect of it against a wrong-doer. (*Id.*) 395; Steph. Cr. Dig. 198; Babcock v. Lawson, 4 Q. B. D. 394; *see, also*, Lewis Bowles' Case, 11 Co. 79b; 2 Steph. Com. 10.) So possession is said to confer a special property, by which is meant that the possessor of a thing is deemed to be owner as against every one who cannot show a better title. Armory v. Delamirie, 1 Sm. Lead. Cas. 357.

PROPERTY, (defined). 50 Ala. 509, 516; 7 Cal. 203; 9 *Id.* 142; 18 *Id.* 11; 20 *Id.* 387; 21 Ill. 171, 172; 59 *Id.* 142, 144; 9 Ind. 202; 13 B. Mon. (Ky.) 293; 4 Gill & J. (Md.) 1; 4 Bradf. (N. Y.) 516; 1 N. Y. 20, 24; 13 *Id.* 396; 43 *Id.* 389; N. Y. Code of Pro. § 464.

— (what is). 4 Pet. (U. S.) 511; 9 *Id.* 117, 137; 10 *Id.* 326; 2 Ct. of Cl. 224; 46 Cal. 415; 11 Ill. 511; 59 *Id.* 142; 3 Mass. 118; 24 Mich. 156; 35 Miss. 108, 114; 2 Park. (N. Y.) Cr. 421; 4 *Id.* 386; 6 Jones (N. C.) Eq. 221; 46 Vi. 60.

— (what is not). 51 Cal. 243; 60 Me. 266, 269; 45 Md. 361, 385; 3 Tex. App. 489.

— (embraces both real and personal). 31 Barb. (N. Y.) 641, 646.

— (equivalent to "worldly substance"). 1 Wash. (Va.) 46, 47.

— (what is not a tax upon). 27 Ark. 625; 50 Ga. 530, 543.

— (right to regulate the use of). 3 Wheel. (N. Y.) Cr. Cas. 244.

— (insurance on). 2 Mass. 186, 280.

PROPERTY, (indorsed on the return of a writ). 26 Me. 191.

— (what is an insurable interest in). 13 Mass. 61; 7 Pick. (Mass.) 273.

— (what is a willful injury to). 2 Abb (N. Y.) N. Cas. 193.

— (in United States constitution). 2 Gray (Mass.) 35; 12 N. Y. 202, 211.

— (in State constitution). 43 Cal. 331; 9 Barb. (N. Y.) 535, 564.

— (in assignment of copyright). 4 Q. B. D. 483.

— (in an insurance policy). 2 Metc. (Mass.) 1; 5 *Id.* 1.

— (in a deed). 3 Pa. 328; 1 Jur. 620; 1 Keen 795.

— (in a statute). 3 Cranch (U. S.) 91; 15 Ark. 200; 11 Ill. 511; 69 Ind. 272; 4 Litt. (Ky.) 9; 2 Abb. (N. Y.) Pr. 234; 45 Barb. (N. Y.) 218; 6 Cow. (N. Y.) 569; 12 How. (N. Y.) Pr. 238; 13 *Id.* 28; 24 N. Y. 381; 69 Pa. St. 151; 3 Wheel. Am. C. L. 178; 7 Ch. D. 351; L. R. 1 Ex. 1; L. R. 5 H. L. 711.

— (in a will). 3 Cranch (U. S.) 129; 8 *Id.* 69, 70; 119 Mass. 523; 37 Miss. 492; 7 Cow. (N. Y.) 80; 1 Edw. (N. Y.) 250, 253; 17 Johns. (N. Y.) 281; 12 Ired. (N. C.) L. 61; 6 Serg. & R. (Pa.) 452; 1 Harp. (S. C.) Eq. 272; Spears (S. C.) Ch. 48; 4 Wheel. Am. C. L. 384; 6 Barn. & C. 512; 6 Bing. 602; 7 *Id.* 664; 9 Dowl. & Ry. 633; 14 East 370; 5 Eng. L. & Eq. 199; 1 Jac. & W. 189; 5 L. J. Ch. n. s. 87; 6 *Id.* 263; 4 Moo. & P. 404; 2 Myl. & K. 365; 1 Chit. Gen. Pr. 90; 1 Jarm. Wills (Perk. edit.) 566, 570.

PROPERTY, ALL HIS, (in a will). 11 East 518.

PROPERTY, ALL MY, (in a will). 6 Binn. (Pa.) 94, 98; 1 Sch. & L. 818.

PROPERTY, ALL MY FREEHOLD, (in a will) 16 East 220.

PROPERTY, ALL MY REAL, (copyhold estate passes under a devise of). 18 Ves. 193.

PROPERTY, ALL OTHER CHATTEL, (in a will). 2 Dru. & War. 59.

PROPERTY, ALL IN REMAINDER OF MY, (in a will). 5 Bos. & P. 214.

PROPERTY AND ASSETS, (in an agreement). 26 Conn. 449.

PROPERTY AND EFFECTS, (in a will). 11 East 290.

PROPERTY AND ESTATE, (includes both real and personal property). 97 Mass. 507.

PROPERTY, ANY, (in city ordinance). 2 Cal. 289.

— (in a statute). 108 Mass. 47.

PROPERTY, ANY EARTHLY, (in a will). 1 Rawle (Pa.) 408.

PROPERTY ATTACHED, (in a statute). 5 Abb. (N. Y.) Pr. n. s. 54.

PROPERTY, CHATTEL, (in a devise). 1 Con. & L. 200.

PROPERTY, CONVEYANCE OF, (in a statute). 9 Barn. & C. 396.

PROPERTY, GOODS AND CHATTELS, (in a will). 14 East 370.

PROPERTY, I SHALL LEAVE IN THE COLONY, (in a will). 17 Eng. L. & Eq. 46.

PROPERTY, I WILL ALL MY LANDED, (in a devise). 1 N. H. 163.

PROPERTY IN LANDS, (defined). 12 Cal. 56.

PROPERTY IN WATERCOURSES, (how derived). Ang. Waterc. § 5.

PROPERTY, MY, (in a deed). 1 Dev. & B. (N. C.) 452.

PROPERTY, OF THE RESIDUE OF TESTATOR'S, (in a will). 2 Desaus. (S. C.) 573, 578.

PROPERTY ON BOARD, (in a policy of insurance). 7 Pick. (Mass.) 271.

PROPERTY OR EFFECTS, (in a statute). 23 Minn. 239, 240.

PROPERTY OTHER THAN LAND, (in taxing act). L. R. 6 Q. B. 707.

PROPERTY, PERSONAL, (what is a will of). 1 Pick. (Mass.) 239.

PROPERTY, REAL, (devise of). 9 Serg. & R. (Pa.) 445.

PROPERTY TAX.—Income tax payable in respect of landed property. See INCOME TAX.

PROPERTY, THE REMAINDER OF MY, (in a will). 3 Pick. (Mass.) 374.

PROPERTY, VALUABLE, (whether copyright is, independent of Stat. 8 Anne). 1 W. Bl. 301, 321.

PROPERTY, WHOLE OF HIS REMAINING, (in a statute). 6 Bing. 630.

PROPHECIES.—See FALSE PROPHECIES.

PROPINQUI ET CONSANGUINEI.—The nearest of kin to a deceased person.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem (Co. Litt. 10): He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote him who is remoter.

PROPINQUITY.—Kindred; parentage.

PROPONENT.—The propounder of a thing. Thus, the proponent of a will is the party who offers it for probate (*q. v.*) See PROPOUND.

PROPORTION, (in a statute). 56 Mo. 60; 34 Wis. 162.

PROPORTION, IN EQUAL, (in a deed to four sons). 4 Mass. 567.

PROPORTION OR SHARE, THE JUST, (in a deed). 1 Ves. & B. 103.

PROPORTUM.—Intent, or meaning.—Cowell.

PROPOSAL.—

§ 1. An offer.—Contracts for public work or supplies, or for the advancement of large private or corporate enterprises, are often let out to the lowest bidder, *i. e.* to him who offers to do what is required for the smallest sum of money. These offers of the competing bidders are called 'proposals.'

§ 2. A statement in writing of some special matter submitted to the consideration of a chief clerk in the English Court of Chancery, pursuant to an order made upon an application *ex parte*, or a decretal order of the court. It is either for maintenance of an infant, appointment of a guardian, placing a ward of the court at the university, or in the army, or apprentice to a trade; for the appointment of a receiver, the establishment of a charity, &c.—Wharton.

Propositio indefinita æquipollet universalis: An indefinite proposition is equivalent to a general one.

PROPOSITION.—(1) A single logical sentence; (2) an offer to do a thing.

PROPOSITUS.—The person proposed; the person from whom a descent is traced.

PROPOUND.—An executor or other person is said to propound a will or other testamentary paper when he takes proceedings for obtaining probate in solemn form. (See ACTION, § 11; PROBATE.) The term is also technically used, in England, to denote the allegations in the statement of claim, in an action for probate, by which the plaintiff alleges that the testator executed the will with proper formalities, and that he was of sound mind at the time.

PROPRIA PERSONA.—See IN PROPRIA PERSONA.

PROPRIETARY.—He who has a property in any thing.

PROPRIETARY CHAPELS.—Chapels erected by and belonging to private persons, in England, and not consecrated for divine service. Such a chapel has no parochial rights, unless acquired by a composition with the patron, incumbent and ordinary of the parish church, nor can public divine service be celebrated in it except with the consent of the incumbent and the license of the bishop. Phillim. Ecc. L. 1183, 1834; 2 Steph. Com. 746; *Moysey v. Hillcoat*, 2 Hagg. Ecc. 30.

PROPRIETARY RIGHTS.—Those rights which an owner of property has by virtue of his ownership. When proprietary rights are opposed to acquired rights, such as easements, franchises, &c., they are more often called natural rights (*q. v.*) See *Orr Ewing v. Colquhoun*, 2 App. Cas. 854. See OWNERSHIP.

Proprietas totius navis carinæ causam sequitur (D. 6, l. 61): The property of the whole ship follows the condition of the keel.

Proprietas verborum est salus proprietatum (Jenk. Cent. 16): Propriety of words is the salvation of property.

PROPRIETATE PROBANDA.—See **DE PROPRIETATE PROBANDA.**

Proprietates verborum observandæ sunt (Jenk. Cent. 136): The proprieties of words are to be observed.

PROPRIETE.—In the French law, the right of enjoying and of disposing of things in the most absolute manner, subject only to the laws. See **PROPERTY.**

PROPRIETOR is almost synonymous with "owner" (*q. v.*), as in the phrase "riparian proprietor." (See **RIPARIAN.**) A person entitled to a trade-mark or a design under the acts for the registration or patenting of trade-marks and designs (*q. v.*), is called "proprietor" of the trade-mark or design.

PROPRIETOR, (in a petition for dower). 2 Ill. 314.

PROPRIETORS, (applies to corporations). 11 Cush. (Mass.) 512.

— (in a contract). 3 App. Cas. 1124.

— (in a statute). 6 Nev. & M. 340.

PROPRIETY, (equivalent to "property") 7 Cush. (Mass.) 53, 70.

PROPRIO VIGORE.—By its own force.

PROPTER.—For; on account of. The initial word of several Latin phrases.

PROPTER AFFECTUM.—On account of bias or favor. See **CHALLENGE**, § 3.

PROPTER DEFECTUM.—On account of defect or incompetency. See **CHALLENGE**, § 3.

PROPTER DEFECTUM SANGUINIS.—On account of failure of blood. See **FAILURE OF ISSUE.**

PROPTER DELICTUM.—On account of crime. See **CHALLENGE**, § 3.

PROPTER HONORIS RESPECTUM.—On account of respect of honor or rank. See **CHALLENGE**, § 3.

PROROGATED JURISDICTION.—In the Scotch law, a power conferred by consent of the parties upon a judge who would not otherwise have jurisdiction.—*Bell Dict.*

PROROGATION.—Prolonging or putting off to another day. In English law, a prorogation is the continuance of the parliament from one session to another, as an adjournment is a continuation of the session from day to day. Prorogation never extends beyond eighty days, but fresh prorogations may take place from time to time by proclamation. See 30 and 31 Vict. c. 81.

PROSECUTE, (synonymous with "put in suit"). 2 Bing. N. C. 7, 44.

PROSECUTE A SUIT, (authority to, implies power to refer it by rule of court). 16 Mass. 396.

PROSECUTE TO FINAL JUDGMENT, (in a bond to). 4 Mass. 103.

PROSECUTING WITNESS, (in a statute). 54 Ill. 356.

PROSECUTION—PROSECUTOR.—

§ 1. A prosecutor is a person who takes proceedings against another in the name of the government. He may be either the public officer appointed for that purpose, or a private person injured by the offense.

§ 2. **Criminal.**—In England the commonest instance of a prosecutor is in criminal matters, where the suit is said to be by "Her Majesty the Queen on the prosecution of A. B. against C. D. (the prisoner)." The prosecutor may be a private person, in which case he is generally the person specially injured by the crime. When the crime is of a heinous nature or likely to go unpunished for want of a prosecutor, the proceedings are conducted by the director of public prosecutions (*q. v.*), in the name of the attorney-general.

§ 3. **Scire facias, &c.**—A person who sets in motion proceedings by *scire facias* to repeal a crown grant (see **SCIRE FACIAS**), by the prerogative process of information (*q. v.*), by mandamus, or similar proceedings, is called the "prosecutor," as is also a person who institutes proceedings for attachment.

PROSECUTION, (an indictment is). 5 Mass. 176; 57 Pa. St. 443.

— (in State constitution). 26 Wend. (N. Y.) 383, 399.

— (in a statute). 10 Wheat. (U. S.) 292; Penn. (N. J.) 360.

PROSECUTOR, (in a penal statute). 3 Zab. (N. J.) 373.

PROSECUTOR OF THE PLEAS.

—The title of the prosecuting officer in each county in New Jersey and one or two other States. The term is used in the same sense as "district attorney" (*q. v.*) in other States.

PROSECUTRIX.—A female prosecutor.

PROSOCER.—A father-in-law's father.

PROSOCERUS.—A wife's grandmother.

PROSPECTIVE STATUTE, (what is). 1 Price 182.

PROSPECTUS.—A document published by a company or corporation, or by persons acting as its agents or assignees, setting forth the nature and objects of an

issue of shares, debentures or other securities created by the company or corporation, and inviting the public to subscribe to the issue. (*See* Lind. Part. 103; Thr. Jt. S. Co. 28, where, however, only prospectuses issued on the formation of a new company are mentioned.) A prospectus is also usually published on the issue, in England, of bonds or other securities by a foreign state or corporation.

§ 2. Prospectuses are of importance from a legal point of view, chiefly because they are not infrequently made the vehicle of misrepresentations, so that persons induced to subscribe on the faith of the statements contained in them acquire a right of action for damages or rescission of the contract. This right, however, is limited to those who subscribed to the issue, and does not extend to persons who may have bought shares or bonds on the market, after seeing a prospectus inviting subscriptions. *Peek v. Gurney*, L. R. 6 H. L. 377.

§ 3. The English Companies Act, 1867, § 38, enacts that every prospectus inviting persons to subscribe for shares in any joint-stock company shall specify the dates of and parties to any contract entered into by the company, or its promoters, directors or trustees, before the issue of the prospectus; and that any prospectus not specifying these particulars shall be deemed fraudulent on the part of the promoters, directors and officers of the company knowingly issuing the same, as regards any person taking shares on the faith of the prospectus without notice of the contract. The cases in this section are referred to in *Twycross v. Grant*, 2 C. P. D. 469; *Sullivan v. Metcalfe*, 5 *Id.* 455.

PROSTITUTE, (defined). 12 Metc. (Mass.) 97; 9 N. W. Rep. 343.

PROSTITUTION.—Harlotry; whoredom; permitting promiscuous sexual intercourse for the sake of gain.

PROSTITUTION, (defined). 12 Metc. (Mass.) 97.

— (in a statute). 8 Barb. (N. Y.) 603.

PROSTITUTION, FOR THE PURPOSE OF, (in a statute). 52 Ind. 526; 54 Me. 24.

PROTECTED TRANSACTIONS.—In England, as a general rule, every bankruptcy, by the doctrine of relation, is deemed to commence from the first act of bankruptcy committed by the bankrupt within twelve months before the adjudication. The effect of this rule is to invalidate alienations and dispositions of property by the debtor, and judgments against him made or obtained since the act of bank-

ruptcy, and its object is to protect the general creditors against fraudulent and collusive arrangements for the benefit of particular creditors. (*Robs. Bankr.* 462.) But to prevent the rule from bearing hardly on honest creditors, the bankruptcy law excludes from its operation payments, transfers, contracts, dealings and executions, when made or obtained *bond fide* by persons not having notice of an act of bankruptcy. These are known as protected transactions. *Id.* 463.

Protectio trahit subjectionem, et subjectio protectionem (Co. Litt. 65a): Protection begets subjection, subjection protection.

PROTECTION.—(1) Defense, shelter from evil, especially from being arrested. (2) An immunity granted by the crown to a person to be free from law suits for a certain time, and for some reasonable cause; it is a branch of the royal prerogative, now very rarely resorted to. (3) The giving of advantages in respect of duties to home over foreign commodities. (4) An instrument given to sailors attesting their American citizenship. (5) A similar instrument protecting the sailor receiving it from impressment.

PROTECTION OF INVENTIONS ACT.—The Stat. 33 and 34 Vict. c. 27. By this act it is provided that the exhibition of new inventions shall not prejudice patent rights, and that the exhibitions of designs shall not prejudice the right to registration of such designs.

PROTECTION ORDER.—By Stat. 20 and 21 Vict. c. 85, § 21, a wife who has been deserted by her husband may apply to a magistrate or justices, or the judge ordinary of the Divorce Court (now a judge of the Probate, Divorce and Admiralty Division of the High Court), for an order protecting her earnings and property acquired since the commencement of such desertion from her husband, and those claiming under him. On the order being made the earnings and property belong to her as if she were a *feme sole*; and as to her property and contracts generally, the order has the effect of a decree of judicial separation (*q. v.*) *Wats. Comp. Eq.* 388; *Browne Div.* 193; *Macq. Husb. & W.* 222. *See* WRIT OF PROTECTION.

PROTECTIONIBUS, DE.—The Stat. 33 Edw. I., Stat. 1, allowing a challenge to be entered against a protection, &c.

PROTECTOR OF SETTLEMENT.—

§ 1. The protector of a settlement* is a person without whose consent a tenant in tail cannot bar the entail except as against his own issue, nor a tenant in base fee enlarge his estate into a fee-simple.

*As to the special meaning of "settlement," "settlor," &c., under the Fines and Recoveries Act, *see* SETTLEMENT.

§ 2. **Owner of prior estate, when protector.**—In the absence of a protector specially appointed by the settlor, the original owner of the first estate for years determinable on the dropping of a life or lives, or any greater estate, prior to the estate tail, is the protector. (Fines and Recoveries Act, § 22.) Thus, if land is limited to B. for life, with remainder to C. in tail, B. is the protector. The act contains special provisions for cases in which co-owners, married women, lunatics, &c., have the first prior estate. (§ 23 *et seq.*) The person to whom the prior estate was originally given remains protector, although he may have encumbered or alienated it. § 21.

§ 3. **Protector by appointment.**—Every settlor is empowered to appoint by the settlement any number of persons *in esse*, not exceeding three, to be protector of the settlement in lieu of the person who would otherwise have been protector, and to insert in the settlement a power of appointing a protector in the place of any protector dying or relinquishing his office. § 32.

§ 4. Although the protector fills an office somewhat similar to that of the donee of an ordinary power, he is exempt from the rules applying to dealings between the donee and the object of a power. (See *FRAUD*, § 13.) Thus the consent given by a protector is not invalidated by his obtaining a pecuniary benefit in consideration of his giving it. § 37; Shelf. R. P. Stat. 331. See *DISENTAILING DEED*; *ESTATE TAIL*; *TENANT TO THE PRECISE*.

PROTECTORATE.—(1) The period during which Oliver Cromwell ruled in England. (2) Also the office of protector. (3) The relation of the English sovereign, till the year 1864, to the Ionian Islands, and, perhaps, at the present time, to Egypt.

PROTEST.—

§ 1. In its most general sense, a protest is an express declaration by a person doing an act that the act is not to give rise to an implication which it might otherwise cause. (3 Sav. Syst. 246.) Thus, the payment of a sum of money by A. in answer to a demand by B. would in general give rise to the presumption that the money was owing by him to B., and if A. wishes to prevent it from doing so, he pays the money under protest. (See an instance, *Hilliard v. Eiffe*, L. R. 7 H. L. 40.) As a general rule, a protest is not effectual unless the payment or other act takes place under compulsion. Thus, if A. wrongfully distrains goods belonging to B., and B. pays the sum claimed for rent under protest in order to regain his goods, he may afterwards sue A. to recover the amount. See *DURESS*.

§ 2. **Bills of exchange.**—In the law of

bills of exchange and promissory notes, a protest is a solemn declaration by a notary stating that he has demanded acceptance or payment, and that it has been refused, with the reasons, if any, given by the drawee or maker, acceptor or indorser for the dishonor. (Byles Bills 257.) The object of a protest is to give satisfactory evidence of the dishonor to the drawer or other antecedent party; but it is not necessary except in the case of a foreign bill (*Id.* 255), or to hold parties to a note other than the maker. See *BILL OF EXCHANGE*, § 10; *NOTING*.

§ 3. **For better security.**—Protest for better security is where the acceptor becomes insolvent, or his credit is publicly impeached before the bill falls due. In such a case the holder may cause a notary to demand better security, and on its being refused the bill may be protested, and notice sent to an antecedent party. The only advantage of such a protest seems to be that there may be a second acceptance for honor; for in other cases the rule is that there cannot be two acceptances on the same bill. Byles Bills 257.

§ 4. **Appearance under protest.**—In the English Admiralty Division, a defendant desiring to object to the jurisdiction must enter an appearance under protest, and then make an application by summons or motion to have the action dismissed on the ground of want of jurisdiction. (*The Catterina Chiazzare*, 1 P. D. 368; *The Vivar*, 2 P. D. 29.) Formerly, a question of this kind was raised by "pleadings on protest," commenced by the defendant filing a "petition on protest," to which the plaintiff filed a reply, and so on. (*Wms. & B. Adm. Pr.* 202; *The Pieve Superiore*, L. R. 5 P. C. 482.) For an instance of a protest filed by the attorney-general, see *The Parlement Belge*, 4 P. D. 130. As to appearance under protest in the ecclesiastical courts, see *Phillim. Eccl. L.* 1258; and in divorce practice, see *Browne Div.* 21.

§ 5. **In maritime law.**—A writing, attested by a justice of the peace, a notary public, or a consul, made and verified by the master of a vessel, stating the severity of a voyage by which a ship has suffered, and showing that it was not owing to the neglect or misconduct of the master.—*Bouvier*.

§ 6. **Duties on imports.**—A written notice of objection served by an importer upon the collector of the port, when, being charged with what he deems an excessive duty on particular goods, he nevertheless

desires to pay it in order to withdraw the goods from the custom house. The effect of this protest is to reserve to the importer a right to bring an action to test the question and recover back the excess from the collector.

PROTEST, (defined). 12 Barb. (N. Y.) 245, 250; 3 Den. (N. Y.) 16; 47 N. Y. 570; 2 Ohio St. 345.

— (what is evidence of). 1 Day (Conn.) 91; 2 Hill (N. Y.) 451, 635.

PROTEST IN WRITING, (in a statute). 129 Mass. 551.

PROTESTANDO.—See **PROTESTATION**.

PROTESTANTS.—Those who adhered to the doctrine of Luther; so called because, in 1529, they protested against a decree of the Emperor Charles V. and of the diet of Spires, and declared that they appealed to a general council. The name is now applied indiscriminately to all the sects, of whatever denomination, who have seceded from the Church of Rome.

PROTESTATION.—A formula once used in pleadings at common law when a party wished to prevent an admission of a fact by him in one action from being afterwards used against him in another action as an estoppel or conclusion of the truth of the fact. (Co. Litt. 124 b.) The necessity of protestation was abolished in 1834. Steph. Pl. (5 edit.) 249, n. (q).

PROTESTED, (said of a bill). 2 Doug. (Mich.) 425.

— (in a reply to a written interrogatory). 112 Mass. 63.

PROTESTING, (in pleading). 3 Bouv. Inst. 293.

PROTHONOTARIES.—(1) The chief clerks of some American courts. (2) Officers in the English Courts of Common Pleas and Exchequer, who were superseded by the masters. 7 Will. IV. and 1 Vict. c. 30; 1 Steph. Com. (7 edit.) 49.

PROTOCOLS.—The original acts and proceedings in an ecclesiastical cause taken down by a notary (πρῶτος νολλῆ, the things first glued together, i. e. the original drafts). Phillim. Ecc. L. 1243; Just. Nov. 45, de Tabell.

PROTUTOR.—In the civil law, a quasi-tutor.

PROUT PATET PER RECORDUM.—Even as it appears by the record. The omission of the words "*per recordum*" is but form, and so it was twice adjudged, viz., in *Hancocke*

v. Prowd, and *Clegat v. Banbury*, 2 Sid. 16; 1 Saund 337 b, n. (4). Rendered unnecessary by 14 and 15 Vict. c. 100, § 24.—*Wharton*.

PROVE.—See **PROOF**; **PROBATE**.

PROVER.—An approver (*q. v.*)

PROVER UNDER BANKRUPTCIES, (in a declaration for slander). 7 Bing. 119.

PROVIDED, (constitutes a condition). 21 Ala. 89.

— (does not necessarily import a condition). 8 Allen (Mass.) 596.

— (in an agreement). 3 Campb. 385.

— (in a covenant). 16 Conn. 409, 419; 2 Mod. 73, 76.

— (in a deed). 1 Cro. 360.

— (in an indenture of apprenticeship). 4 Day (Conn.) 313.

— (in a lease). Willes 496, 498.

— (in a statute). 58 Ala. 396.

— (in a will). 11 Wend. (N. Y.) 259; Willes 303, 308.

PROVIDED ALWAYS, (may constitute a condition, limitation, or covenant). 20 Ind. 398.

— (in a deed). 8 Barn. & C. 308, 315; Litt. § 329.

— (in a will). L. R. 5 H. L. 532.

PROVINCE.—(1) A district subject to an archbishop's jurisdiction. England is divided into two provinces, those of Canterbury and York, and each province contains divers dioceses. (1 Bl. Com. 111. See **ARCHBISHOP**; **DIOCESE**; **PROVINCIAL COURTS**.) (2) Authority; power; function; as the province of a judge, court, or jury. (3) A colony or dependency.

PROVINCIAL CONSTITUTIONS.—The decrees of provincial synods held under divers Archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI.—*Lynd. Prov.*

PROVINCIAL COURTS.—Ecclesiastical Courts within the provinces of the two primates, and are hence also called the "Courts of the Primates." They are (1) in the province of Canterbury—(a) the Court of Arches (*q. v.*); (b) the Court of the Vicar-General, wherein bishops of the province are confirmed; (c) the Court of the Master of the Faculties, wherein cases relating to notaries public are heard (see **FACULTY**); (d) the Court of Audience (*q. v.*); and (e) the Court of the Commissary of the Archbishop; (2) in the province of York—(a) the Supreme Court or Chancery Court (see **CHANCERY**, § 7); (b) the Consistory Court; and (c) the Court of Audience (*q. v.*) Phillim. Ecc. L. 1201. See **DIOCESAN COURTS**.

PROVING A WILL IN CHANCERY.—Where lands were devised by will away from the heir, the devisee, in

order to perpetuate the testimony of the witnesses to such will, exhibited a bill in Chancery against the heir, and set forth the will *verbatim* therein, suggesting that the heir was induced to dispute its validity; and then the defendant having answered, they proceeded to issue as in other cases, and examined the witnesses to the will; after which the cause was at an end, without proceeding to any decree, no relief being prayed by the bill; but the heir was entitled to his costs, even though he contested the will. 3 Bl. Com. 450; 3 Steph. Com. (7 edit.) 463 n.

PROVING OF THE TENOR.—In the Scotch law, an action for proving the tenor of a lost deed.—*Bell Dict.*

PROVISION—PROVISORS.—In the law of *premunire* (q. v.) a provision was a nomination by the pope to an English benefice before it became void, though the term was afterwards indiscriminately applied to any right of patronage exerted or usurped by the pope. The Stat. 35 Edw. I. was the first statute against provisions. Persons who attempted to take the benefit of provisions were called "provisors." 4 Steph. Com. 189.

PROVISIONAL.—Temporary.

PROVISIONAL ASSIGNEES.—Those who (under a former system of the English bankrupt law) were appointed under *fiats* in bankruptcy in the country to take charge of bankrupts' estates, &c., until the creditors' assignees were appointed.

PROVISIONAL COMMITTEE.—A committee appointed for a temporary occasion.

PROVISIONAL ORDER.—Under various acts of parliament, certain public bodies and departments of the government are authorized to inquire into matters which, in the ordinary course, could only be dealt with by a private act of parliament, and to make orders for their regulation. These orders have no effect unless they are confirmed by an act of parliament, and are hence called "provisional orders." Several orders may be confirmed by one act. The object of this mode of proceeding is to save the trouble and expense of promoting a number of private bills.

As to provisional orders by the inclosure commissioners, see **INCLOSURE**, § 3. Provisional orders are also made by the Local Government Board under the Public Health Act.

PROVISIONAL REMEDY.—A term employed in the New York Code to designate a class of civil remedies giving the plaintiff a temporary security during

the prosecution of his action. Such remedies are arrest, attachment, claim and delivery, injunction, receiver, &c.

PROVISIONAL REMEDY, (in a statute). 36 How. (N. Y.) Pr. 540; 54 *Id.* 97.

PROVISIONAL SEIZURE.—A proceeding in Louisiana substantially the same as attachment of property in other States.

PROVISIONAL SPECIFICATION.—See **SPECIFICATION**.

PROVISIONES.—Those acts of parliament which were passed to curb the arbitrary power of the crown.—*Mat. Paris.*

PROVISIONS.—(1) Food; victuals. (2) The nominations to benefices by the pope were so called, and those who were so nominated were termed "provisors." Various statutes were passed in the reign of Edward III. forbidding all ecclesiastical persons from purchasing these provisions, in particular the Stats. 25 Edw. III. st. 6, and 27 *Id.* st. 1, which are pre-eminently called the "Statutes of Provisors." See **PRÆMUNIRE**.

PROVISIONS, (include "corn"). 23 Ark. 101
— (in lien act). 54 Ala. 670.
— (in a will). 6 Ired. (N. C.) Eq. 363.
7 Jur. 1147; L. R. 7 Ch. 356.

PROVISIONS AND STORES, (in a statute). 20 Wend. (N. Y.) 177.

PROVISIONS OF OXFORD.—Certain provisions made in the Parliament of Oxford, 1258, for the purpose of securing the execution of the provisions of *Magna Charta*, against the invasions thereof by Henry III.; the government of the country was in effect committed by these provisions to a standing committee of twenty-four, whose chief merit consisted in their representative character and their real desire to effect an improvement in the king's government.—*Brown*.

PROVISIONS OF WAR, (fat cattle are). 2 Wheat. (U. S.) 119; 9 Cranch (U. S.) 243.

PROVISO.—A clause in a deed, statute or other instrument, beginning "provided always, that, &c.;" in Latin, *proviso semper*. (Litt. § 329.) It operates as a condition, limitation, qualification or covenant, according to its tenor. (Co. Litt. 208b.) A common instance of a proviso is that for re-entry contained in almost every lease (see **RIGHT OF ENTRY**), and the proviso for redemption contained in an ordinary mortgage (q. v. § 6).

PROVISO, (defined). 9 Barn. & C. 831, 836.
— (when creates a condition). 1 Keb. 897; 3 Com. Dig. 86; Com. L. & F. 105.

PROVISO, (when does not create a condition). 1 Cro. 73.

— (in an agreement). 1 Lev. 155.

— (in a bond). 2 Mod. 36.

— (in a mortgage deed). 2 Munf. (Va.) 337; 2 Co. 70; Yelv. 206.

— (in a lease). 3 Wheel. Am. C. L. 191; 1 Cro. 242; Dyer 150 a.

— (in a marriage settlement). 1 Keb. 842, 860.

— (in a statute). 15 Pet. (U.S.) 165, 423; 58 Ala. 396, 401; 4 Johns. (N. Y.) 304; 1 Hen. & M. (Va.) 341.

— (in a will). 1 Dyer 3 b.

Proviso est providere præsentia et futura non præterita (Co. 72): A proviso is to provide for the present or future, not the past.

PROVISO, TRIAL BY.—In the English practice, where the plaintiff after issue joined, did not proceed to trial where he ought to have done so, the defendant might, under the old practice, have the action tried by proviso; he might give the plaintiff notice of trial, make up the record, carry it down and enter it, and proceed to the trial as if he were proceeding as plaintiff. This could be done only in cases where the plaintiff had been guilty of some laches or default after issue joined, except in replevin, prohibition, *quare impedit*, and error in fact; in which cases, both parties being plaintiffs, the defendant might make up the record, and thereupon proceed to trial, although no laches or default were imputable to the plaintiff. By rule 42 H. T. 1853, "no trial by proviso shall be allowed in the same term in which the default of the plaintiff has been made, and no rule for a trial by proviso shall be necessary." By C. L. P. Act, 1852, § 116, nothing shall affect the right of a defendant to take down a cause for trial after default by the plaintiff; and if records are entered for trial both by the plaintiff and the defendant, the defendant's record shall be treated as standing next in order after the plaintiff's record in the list of causes. A defendant was seldom tried by proviso, as the better course was to take proceedings under the C. L. P. Act, 1852, § 101. (2 Chit. Arch. Pr. (12 edit.) 1492.) Under the new practice of the Judicature Acts, if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a court or judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial and thereby specify a mode of trial, and in such case the plaintiff, on giving notice within four days or such extended time as a court or judge may allow, that he desires to have the issues of fact tried before a judge and jury, shall be entitled to have the same so tried. (Jud. Act, 1875, Ord. xxxvi., r. 4; *see, also*, rr. 2 and 3.)—*Wharton*.

PROVOCATION.—Incitement to violence. Provocation can never render homicide either justifiable or excusable; at the most, it may reduce murder to manslaughter. (1 Hale P. C. 466.) But if there be evidence of express malice, or

if the provocation was at an end, the homicide would be murder, and not manslaughter. The matter alleged as provocation must consist of some sort of battery, with or without words, and not of words only. Arch. Cr. Pr. 631-4.

PROVOST.—The principal magistrate of a royal burgh in Scotland; a governing officer of an university or college.

PROXENETA.—A kind of broker or agent. All contracts and agreements respecting marriage (commonly called "marriage-brokerage contracts"), by which a party engages to give another a compensation, if he will negotiate an advantageous marriage for him, are void, as being injurious to or subversive of the public interest. But the civil law does not seem to have held contracts of this sort in such severe rebuke, for it allowed *proxeneta*, or match-makers, to receive a reward for their services to a limited extent. And the period is comparatively modern in which a different doctrine was engrafted into the common law, and received the high sanction of the House of Lords. All marriage-brokerage contracts are utterly void as against public policy—so much so that they are deemed incapable of confirmation, and even money paid under them may be recovered back in a court of equity. 1 Story Eq. Jur. § 260.

PROXIES.—Annual payments made by the parochial clergy to the bishop, &c., on visitation. *See* PROXY.

PROXIMATE.—Immediate; nearest; next in order.

PROXIMATE CAUSE, (defined). 5 Otto (U.S.) 130.

— (what is). 32 Me. 46; 33 *Id.* 204.

PROXIMUS.—Next.

Proximus est cui nemo antecedit; supremus est quem nemo sequitur (D. 50, 16, 92): He is next whom no one precedes; he is last whom no one follows.

PROXY.—

§ 1. Proxy means: (1) A person appointed to represent another at a meeting or number of meetings; (2) the instrument containing the appointment. In most companies a shareholder has the power of appointing any other shareholder as his proxy to vote at meetings.

§ 2. In English bankruptcy practice, any creditor may, by a memorandum subscribed to his proof or by a separate instrument in writing, appoint a person to represent him as a proxy in the matter of the bankruptcy; if in general terms, the proxy operates as an authority for the appointee to vote at all meetings, receive dividends, and generally to act in all matters in the

bankruptcy as fully as the creditor himself could act. *Robb. Bankr. 181 et seq.*; Bankruptcy Act, 1869, s. 80, § 8.

PROXY, VOTE BY, (in by-law of corporation). 5 Day (Conn.) 329.

Prudenter agit qui præcepto legis obtemperat (5 Co. 49): He acts prudently who obeys the command of the law.

PRYK.—A kind of service of tenure. Blount says it signifies an old-fashioned spur with one point only, which the tenant, holding land by this tenure, was to find for the king.—*Wharton*.

PSEUDOGRAPH.—False writing.

PUBERTAS.—*See* AGE.

PUBERTY.—The age of fourteen in men, and twelve in women; when, by the common law, they are held fit for and capable of contracting marriage. *See* 4 Steph. Com. (7 edit.) 23; 4 Broom & H. Com. 17.

PUBLIC.—(1) Open; notorious. (2) The whole body of citizens of a nation, or of a particular district or city. (3) Affecting the entire community. (4) Common to all; at the command of any one.

PUBLIC ACCOUNTS.—The accounts of the expenditure of the nation.

PUBLIC ACT, (what is). 4 Hen. & M. (Va.) 146.

— (distinguished from "special" or "private" act). 3 Crim. L. Mag. 185, 186.

— (effect of declaring a private or special act to be). 10 Bing. 404; 1 Cromp. M. & R. 44; 4 Moo. & S. 177.

PUBLIC ACT OF PARLIAMENT (or OF THE LEGISLATURE).—An act which concerns the whole community, and of which the courts of law are bound judicially to take notice. *See*, for distinction between a public and private act, PRIVATE ACT; PRIVATE BILL.

PUBLIC ASSEMBLY, (a justice's court is). 3 Tex. App. 444.

PUBLIC BENEFIT, (taking of land for). 44 Vt. 648; 8 Am. Rep. 398.

PUBLIC BLOCKADE, (when terminates). 2 Wall. (U. S.) 135.

PUBLIC BRIDGE, (what is). 12 East 192, 201; 2 Mau. & Sel. 262; 1 Ry. & M. 144.

— (is part of a road). 4 Neb. 150, 158.

PUBLIC BUILDING, (in a statute). 5 Vr. (N. J.) 377.

PUBLIC CHAPELS.—Chapels founded at some period later than the church itself; they

were designed for the accommodation of such of the parishioners as in course of time had begun to fix their residence at a distance from its site, and chapels so circumstanced were described as *chapels of ease*, because built in aid of the original church. 3 Steph. Com. (7 edit.) 745.

PUBLIC CHARITY, (what is). 2 Atk. 87.

PUBLIC CHARITY, AN INSTITUTION OF PURELY, (in act of March, 1864). 36 Ohio St. 253.

PUBLIC CHARITY, A PURELY, (in State constitution). 90 Pa. St. 21.

PUBLIC COMPANIES.—*See* COMPANY, § 10.

PUBLIC CORPORATION.—A corporation created by government for political purposes, as a county, city, town, parish, or village; or not for political purposes, all the stock being owned by the government, and the incidents of sovereignty (or some of them) being conferred upon it.

PUBLIC CORPORATIONS, (defined). Ang. & A. Corp. 8.

— (what is). 51 Cal. 406.

— (what is not). 14 How. (U. S.) 268; 8 Watts (Pa.) 316.

— (distinguished from private corporations). 4 Wheat. (U. S.) 668; 13 Wend. (N. Y.) 334; 3 Wheel. Am. C. L. 441; Ang. & A. Corp. 22.

— (when levee district is). 51 Cal. 406.

PUBLIC DEBT.—*See* NATIONAL DEBT.

PUBLIC DOCUMENT, (defined). 1 Dak. T. 328.

PUBLIC DUES, (railroad taxes are). 10 Bush (Ky.) 132.

PUBLIC ENEMY.—A nation at war with the United States; also every citizen or subject of such nation. *See* COMMON CARRIER; ENEMY.

PUBLIC FUNDS.—*See* FUNDS.

PUBLIC HEALTH.—The law relating to public health is contained (as to England generally) in the Public Health Acts, 1875-9, and (as to London) in the Metropolis Local Management Act, 1855, and other acts. (The principal ones are enumerated in part i. of sched. v. to the Public Health Act, 1875; 3 Steph. Com. 168 *et seq.*) In America each State has its own system of laws for the preservation and protection of the public health, and these, together with numerous ordinances of the larger cities and towns, form the

body of American law on this subject. *See* LOCAL GOVERNMENT BOARD; NUISANCE; SANITARY AUTHORITIES.

PUBLIC HIGHWAY.—*See* HIGHWAY; NAVIGABLE.

PUBLIC HIGHWAY, (what is). 1 Pa. 462.
 — (what is not). 1 Stew. (N. J.) 100.
 — (when a railroad is). 68 Ill. 524.
 — (how pleaded). 1 H. Bl. 351.

PUBLIC HOUSE.—A place of public resort, mostly for purposes of drinking. *See* GAMING; INNKEEPERS; PUBLICANS; LICENSE.

PUBLIC HOUSE, (distinguished from "public place"). 26 Ala. 69.

— (a broker's office is). 31 Ala. 371.
 — (a barber shop is). 30 Ala. 550.
 — (country store-house is). 27 Ala. 47; 29 *Id.* 40; 30 *Id.* 524, 532.

— (house of a toll-bridge keeper is). 29 Ala. 46.

— (a saddler's shop is). 32 Ala. 596.
 — (a lawyer's office is). 26 Ala. 135; 37 *Id.* 472.

— (office of a justice of the peace is). 30 Ala. 19.

— (a boarding house is not). 3 Brews. (Pa.) 344.

— (a physician's office is not, within statute against gaming). 25 Ala. 78.

— (a privy of a country school-house during vacation is not). 35 Ala. 390.

— (in covenant in deed). L. R. 2 Eq. 688.

PUBLIC HOUSE, AT A, (in an indictment for playing cards). 19 Ala. 528.

PUBLIC IGNOMINY, (defined). 38 Iowa 220.

PUBLIC INDECENCY, (in a statute). 10 Ind. 140; 16 *Id.* 335, 338.

PUBLIC INSTITUTION, (the University of Alabama is). 5 Stew. & P. (Ala.) 17.

— (the University of North Carolina is). 8 Ired. (N. C.) Eq. 257.

PUBLIC LANDS, (defined). 2 Otto (U. S.) 761; 10 Nev. 290.

PUBLIC LAWS, (what are). 2 Hill (N. Y.) 241; 1 T. R. 125; 2 *Id.* 569.

— (in charter of a village corporation). 49 Vt. 282.

PUBLIC LIBRARY, (what is not). 9 R. I. 559.

PUBLIC MINISTER.—In international law, this term comprises all the higher grades of the representatives of foreign countries; but it does not extend to include a consul, or even a consul-general, when acting in the place of an absent minister. *See* AMBASSADOR; MINISTER.

PUBLIC MINISTER, (an attaché to a foreign legation is). Baklw. (U. S.) 234.

PUBLIC MONEY, (in act of congress). 12 Ct. of Cl. 281, 290.

PUBLIC MONEYS, (funds of a private corporation are not). 10 Tex. App. 627.

PUBLIC NAVIGABLE RIVER, (what is not conclusive evidence of). 2 Barn. & Ald. 662.

PUBLIC NUISANCE.—*See* NUISANCE, § 1.

PUBLIC NUISANCE, (defined). 73 Ind. 197; 4 Wend. (N. Y.) 9, 30.

— (what is). 8 Cow. (N. Y.) 152.

— (any person may abate). 3 Paige (N. Y.) 213.

PUBLIC OFFICE, (in State constitution). 71 N. Y. 233, 244.

— (in charter of city of Brooklyn). 77 N. Y. 503, 508.

PUBLIC OFFICER.—

§ 1. In America, this phrase means the holder of a public government office (*see* FRAUD, § 18), but in England, it is more generally used to denote an officer of a joint stock company or corporation. Fraudulent appropriation of money, alteration of accounts, destruction of books and papers, &c., by such a public officer are misdemeanors. Stat. 24 and 25 Vict. c. 96, § 81 *et seq.*

§ 2. The term "public officer" in the latter sense seems to be derived from the Stat. 7 Geo. IV. c. 46, which provided for the appointment of public officers of banking companies, and empowered such companies to sue and be sued in the name of any such officer, although the companies themselves were not incorporated. A similar provision was frequently contained in private acts authorizing the formation of unincorporated companies. Companies formed under the modern acts are always incorporated. *See* COMPANIES ACTS.

PUBLIC OFFICER, (defined). 1 Pinn. (Wis.) 182; 32 Wis. 124; 39 *Id.* 79.

— (includes officers *de facto* and *de jure*). 69 Me. 22.

— (in a statute). 49 Ala. 88.

PUBLIC, OR JOINT STOCK, (in a statute). 3 Stark. 158.

PUBLIC PEACE, (what is a breach of). 11 Vt. 236.

— (what is not a breach of). 22 Vt. 323.

PUBLIC PEACE AND ORDER, (in a statute). 6 Daly (N. Y.) 276.

PUBLIC PLACE.—This phrase has been variously defined in criminal cases where an element of the offense consists in its having been committed in a public place. *See* the references given below. *See, also*, AFFRAY; GAMING; INDECENT EXPOSURE.

PUBLIC PLACE, (defined). 52 Ala. 384; 29 Ind. 206; 52 *Id.* 311, 312, 481; 26 Tex. 204.

— (what is). 13 Ala. 602; 17 *Id.* 369; 19 *Id.* 551; 22 *Id.* 15; 35 *Id.* 392; 48 Mo. 300; 57 N. H. 556; 26 Tex. 145; 22 Gratt. (Va.) 917; 8 Leigh (Va.) 741; 2 Va. Cas. 515; 44 Wis. 213.

— (what is not). 12 Ala. 492; 22 *Id.* 15; 26 *Id.* 69; 21 Tex. 223; 6 Gratt. (Va.) 689; 8 *Id.* 585; 14 *Id.* 679.

— (not equivalent to "public highway"). 18 Ala. 415; 29 Ind. 206.

— (not synonymous with "publichouse"). 26 Ala. 69.

— (in a statute). 25 Ala. 60; 26 *Id.* 135; 1 C. E. Gr. (N. J.) 48; 4 Hun (N. Y.) 636; 36 Vt. 645; 40 *Id.* 437, 448.

— (to post notice of sale). 71 Me. 547.

PUBLIC PLACE OF AMUSEMENT, (a billiard room is not, unless licensed). 13 Allen (Mass.) 247.

PUBLIC PLACE, OR OTHER, (in a statute). 36 N. H. 59.

PUBLIC PLACES, (in a statute). 6 Pick. (Mass.) 276.

PUBLIC POLICY.—*See* POLICY.

PUBLIC POLICY, (obligations against, are void). 5 Halst. (N. J.) 92.

PUBLIC POSTS, (in a contract). 13 Iowa 229.

PUBLIC PRINTING, (defined). 4 Ind. 1.

PUBLIC PROSECUTOR.—*See* DIRECTOR OF PUBLIC PROSECUTIONS; DISTRICT ATTORNEY; PROSECUTOR OF THE PLEAS.

PUBLIC PURPOSE, (defined). 20 Mich. 485.

— (what is). 3 Wall. (U. S.) 654; 4 *Id.* 270.

PUBLIC RIVER.—*See* RIVERS, § 1.

PUBLIC RIVER, (defined). 17 Wend. (N. Y.) 591.

— (what is). 3 Cal. (N. Y.) 307; 20 Johns. (N. Y.) 98; 1 McCord (S. C.) 580; Ang. Waterc. § 535.

— (what is not). 6 Dowl. & Ry. 616.

PUBLIC ROAD, (a turnpike is not). 10 Ired. (N. C.) L. 222.

PUBLIC SALE, (in a statute). 4 Watts (Pa.) 258.

PUBLIC SCHOOL, (defined). 103 Mass. 97, 99, 100.

— (distinguished from colleges, incorporated academies, and the higher seminaries of learning). 12 Allen (Mass.) 508.

PUBLIC SCHOOLS.—*See* COMMON SCHOOLS; EDUCATION ACTS.

PUBLIC SQUARE, (defined). 7 Ind. 641; 8 *Id.* 174, 378.

PUBLIC STATUTE.—*See* PUBLIC ACT, &c.

PUBLIC STATUTE, (what is). 1 Cranch (U. S.) C. C. 369; 5 Mass. 266, 268, 324; 3 Cow. (N. Y.) 662.

PUBLIC STATUTE, (what is not). 9 Greenl. (Me.) 54.

PUBLIC STOCKS AND SECURITIES, (what are). 10 Allen (Mass.) 100.

PUBLIC STREET OR ROAD, (in hackney coach act). L. R. 4 Ex. 319.

PUBLIC TAX, (defined). 46 N. Y. 506.

PUBLIC TAXES, (in corporate charter). 46 Vt. 773; 14 Am. Rep. 640.

PUBLIC TRADE, (what constitutes). 3 Q. B. 39.

PUBLIC, TRUE, AND NOTORIOUS.—The old form by which charges in the *allegations* in the ecclesiastical courts were described at the end of each particular.

PUBLIC TRUST, (what is). 2 Crompt. & J. 636.

— (in State constitution). 2 Cow. (N. Y.) 14.

— (in a statute). 20 Johns. (N. Y.) 492.

PUBLIC USE, (defined). 18 Cal. 229.

— (what is). 1 Vt. 350, 351.

— (taking land for). 50 N. H. 591; 4 Coldw. (Tenn.) 419.

PUBLIC USES, (in a devise). 7 Wheel. Am. C. L. 406.

PUBLIC VERDICT.—*See* PRIVY VERDICT.

PUBLIC WAR, (when justifies the taking of life). 25 Wend. (N. Y.) 574.

PUBLIC WAYS.—Highways (*q. v.*)

PUBLIC WELFARE, (embraces public health and convenience). 20 Ohio St. 349.

— (in State constitution). 4 Ohio St. 494.

PUBLIC WORKS, (in State constitution). 13 Fla. 699.

PUBLIC WORSHIP REGULATION ACT, 1874, contains provisions designed to prevent unlawful alterations in or additions to the fabric, ornaments or furniture of any church belonging to the Church of England, to prevent the use of unlawful ornaments, and to enforce the use of prescribed ornaments and vestures, and the observance of the rites ordered by the Book of Common Prayer. Phillim. Ecc. L. Supp. 38; *Regule Generales*, February, 1879, 4 P. D. 250. *See* ECCLESIASTICAL COURTS.

PUBLIC WRONGS.—All crimes and misdemeanors (*qq. v.*)

PUBLICA JUDICIA.—*See* POPULAR ACTIONS.

PUBLICANS.—Persons authorized by license to retail beer, spirits, or wines. In England, under the term publicans, are comprised innkeepers, hotel-keepers, alehouse-keepers, keepers of wine vaults, &c. An inn differs from an alehouse in this—that the former is a place intended for the lodging, as well as the entertainment of guests, whereas the latter is intended for their entertainment only. If, however, ale or beer be commonly sold in an inn, as

is almost invariably the case, it also is an alehouse, and if travelers be furnished with beds, lodged and entertained in an alehouse, it also is an inn. It is not material to the character of an innkeeper that he should have any sign over his door; it is sufficient that he makes it his business to entertain travelers. As to the duties and the responsibility of innkeepers, see INN-KEEPERS. As to the licensing of public houses, see LICENSE, § 5 and n.

PUBLICATIO.—In the civil law, confiscation.

PUBLICATION—PUBLISH—

§ 1. **Libel.**—To publish a libel is to deliver it, exhibit it, read it or otherwise communicate its purport to any person other than the person libeled. Steph. Cr. Dig. 186.

§ 2. **Patent.**—A patent for an invention may be invalidated, in England, by prior publication there. Thus, if the invention was described in a book accessible and known to the general public in England, or at least to that portion of the public whose attention is turned to such matters, before being patented, that would invalidate the patent. (*Stead v. Williams*, 2 Webs. P. R. 126; *Stead v. Anderson*, *Id.* 147; *Plimpton v. Spiller*, 6 Ch. D. 412) A similar rule obtains in American patent law.

§ 3. **Will.**—In the law of wills, publication signifies that a will has been recognized by the testator as his operative will; express publication in the presence of witnesses is necessary, but, in England, the fact of a will being in the custody of the testator is a sufficient publication of a will of personality. (Wms. Ex. 81.) Whether the Statute of Frauds required publication of a will of land is doubtful. (*Id.* 86, n. q.) And now, by the Wills Act, no publication of a will is required. 1 Vict. c. 26, § 13.

PUBLICATION, (what is). 2 Serg. & R. (Pa.) 102.

— (when libelous). 3. Crim. L. Mag. 178.

— (in a submission to arbitration). 8 Dowl. Pr. C. 392.

PUBLICATION OF A LIBEL, (what is). 3 Barn. & Ald. 717; 4 Barn. & C. 35; 1 Saund. 132 n.

PUBLICATION OF A WILL, (what is). 1 Mass. 263 n.

PUBLICI JURIS ("of public right"), as applied to a thing or right, means that it is open to or exercisable by all persons.

§ 2. When a thing is common property,

so that any one can make use of it who likes, it is said to be *publici juris*, as in the case of light, air and public water. See AIR; LIGHT; NATURAL RIGHTS; WATER.

§ 3. So when a copyright or patent has expired, or a trade-mark or trade-name becomes common property, the book, process, trade-mark, or trade-name is said to be *publici juris*, i. e. any person can print or use it. *Ford v. Foster*, L. R. 7 Ch. 611.

§ 4. As applied to the case of water flowing through private land, *publici juris* means that the water flows in such a defined channel as to give the owner of each piece of land through which it passes what are called rights of water in respect of it, as opposed to water which is either confined to one piece of land, as in a pond, or percolates or flows in no defined course. "Flowing water is *publici juris*, not in the sense that it is a *bonum vacans*, to which the first occupant may acquire an exclusive right; but it is public and common in this sense only, that all may reasonably use it who have a right of access to it." *Embrey v. Owen*, 6 Exch. 369, quoted in *Phear Rts. W.* 22, 33.

PUBLISH, (defined). 2 Dev. (N. C.) L. 115.

— (in copyright act). 5 Ch. D. 267, 279.

PUBLISHED, (a will is, when delivered). 3 Mees. & W. 461.

— (when an award is). 28 Vt. 445, 448; 9 Bing. 605; 1 Dowl. Pr. C. 722; 2 Chit. Gen. Pr. 115.

— (in a statute). 1 Halst. (N. J.) 415.

PUBLISHER, (when means "printer"). 20 Minn. 448.

PUCHTA.—Georg Friedrich Puchta was born August 31st, 1798, became professor at Erlangen, Munich, Marburg, Leipzig and Berlin, and died January 8th, 1846. He wrote numerous works on modern Roman law, especially the *Cursus der Institutionen* and the *Lehrbuch der Pandecten*.—*Holtz. Encycl.*

PUDDLING.—A process of importance in canal and other engineering works. A mixture is made of well-tempered clay and sand, reduced to a semi-fluid state, and rendered impervious to water by manual labor, as by working and chopping it about with spades. It is usually applied in three or more strata, to a depth or thickness of about three feet; and care is taken at each operation so to work the new layer of puddling stuff as to unite it with the stratum immediately beneath. Over the top course a layer of common soil is usually laid. It is only by puddling that the filtration of the water of canals into the

neighboring lower lands through which they pass can be prevented. (1 Smiles' Lives of the Engineers 353, n. (2)). Also a process in the in the smelting of iron.—*Wharton*.

PUDZELD.—To be free from the payment of money for taking wood in a forest. Co. Litt. 233a. See *WOODGILD*.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum (3 Co 40): Children are of the blood of their parents, but the father and mother are not of the blood of the children.

PUERITIA.—The age from seven to fourteen. 4 Steph. Com. (7 edit.) 23.

PUFENDORF.—Samuel (Freiherr) von Pufendorf was born January 8th, 1632, became professor in Heidelberg, and died October 16th, 1694. He wrote *De Jure Naturæ et Gentium* and other works.—*Holtz. Encycl.*

PUFFER.—One who attends a sale by auction for the purpose of raising the price and exciting the eagerness of the bidders. A bidder may be privately appointed by the owner, in order to prevent the estate or property from being sold at an undervalue; but where a person is employed, not as a precaution to prevent a sale at an undervalue, but to screw up the price, it is a fraud. A vendor can appoint only one bidder. If the particulars or advertisements state that the property is to be sold *without reserve*, the sale would be void against a purchaser, if any person were employed as a puffer, and bid at the sale. (St. Leon. Vend. & P. (14 edit.) 9-11.) As to the invalidity, in certain cases, of sales by auction of land, by reason of the employment of a puffer, see 30 and 31 Vict. c. 48.

PUGILISM.—See *PRIZE-FIGHTING*.

PUIS DARREIN CONTINUANCE.—Under the common law system, a plea *puis darrein continuance* is one in which the defendant pleads some matter of defense which has arisen "since the last continuance," or adjournment. (See *CONTINUANCE*.) After the abolition of continuances in England, the same name was given to pleas of defenses which arose after the defendant has put in his plea. (See *PLEA*, § 8.) Under the new English practice, where a ground of defense arises after

the delivery of the statement of defense, the defendant may, by leave of the court, deliver a further defense setting forth the same. Rules of Court xx. 1; Arch. Pr. 737.

PUISNE literally means "later born," as in the phrase *mulier puisné* (see *MULIER*). As applied to incumbences, *puisné* denotes subsequent in point of date. See *PRIORITY*, § 2.

While the old Common Law Courts existed in England, all the judges of each court, except the chiefs, were called "*puisné* justices," or "*puisné* barons," according to the court. The justices of the Queen's Bench Division, other than the lord chief justice, are similarly called "*puisné* justices."

PUISSANCE PATERNELLE.—In the French law, the male parent has the following rights over the person of his child: (1) If child is under sixteen years of age, he may procure him to be imprisoned for one month or under. (2) If child is over sixteen and under twenty-one he may procure an imprisonment for six months or under, with power in each case to procure a second period of imprisonment. The female parent, being a widow, may, with the approval of the two nearest relations on the father's side, do the like. The parent enjoys also the following rights over the property of his child, viz., a right to take the income until the child attains the age of eighteen years, subject to maintaining the child and educating him in a suitable manner.—*Brown*. See *PATRIA POTESTAS*.

PULSATOR.—The plaintiff, or actor.

PULSE, (beans are a species of). Moo. C. C. 323, 326.

PUNCTUATION.—The division of a written or printed document into sentences by means of periods; and of sentences into smaller divisions by means of commas, semi-colons, colons, &c. Punctuation has no place in the construction of deeds or other written instruments.

PUNCTUATION, (when resorted to to interpret a writing). 11 Pet. (U. S.) 41.

PUND-BRECH.—Pound-breach (*q. v.*)

PUNISHABLE, (in a statute). 118 Mass. 36.

PUNISHMENT.—The penalty for transgressing the law. See *CRIME*; *DEATH*; *IMPRISONMENT*; *PENAL SERVITUDE*; *PENALTY*; *POLICE SUPERVISION*; *WHIPPING*.

PUNISHMENT, (in a statute). 2 Mass. 30.
PUNISHMENTS, USUAL, (what are). 2 Wheel. Cr. Cas. 25.

PUNITIVE.—See *DAMAGES*, § 4

PUNITIVE, (synonymous with "exemplary" as applied to damages). 80 Ill. 233.

— (synonymous with "vindictive" and "exemplary" as applied to damages). 2 Metc. (Ky.) 146.

PUPIL.—A ward; one under the care of a guardian.

PUPILARITY.—Non-age.

Pupillus pati posse non intelligitur (D. 50, 17, 110, 21): A pupil or infant is not supposed to be able to suffer, *i. e.* to do an act to his own prejudice.

PUR AUTER VIE.—See **TENANT FOR LIFE**.

PUR CAUSE DE VICINAGE.—See **COMMON**, § 8.

PURCHASE.—**NORMAN-FRENCH**: *purchas*, *purchaser*, more modern *pourchas*, *pourchasser* from *pur* (intensive), and *chasser*, to seek after, acquire (*Littré s. v. Pourchasser*; see **CHASE**). Hence, the old writs speak of "purchasing" land by accretion (see *Britt. 50 b*), and of purchasing writs, charters of pardon, &c. Co. Litt. 1.8 b.

This word is used in law not only in the popular sense of buying (see **VENDORS AND PURCHASERS**), but also in a technical sense to denote that a person has acquired land by the lawful act of himself or another, *e. g.* by conveyance, gift or devise, as opposed to title by act of the law, such as descent, dower, curtesy, &c., and to title by wrong, as in the case of disseisin. (Litt. § 12; Co. Litt. 3 b, 18 b.) As to escheat, see that title, § 3. See **PURCHASER**; **TITLE**.

PURCHASE, (defined). 40 Cal. 194; Hob. 65; 10 Mod. 92; Vern. & S. 23; Willes 444, 447; 1 Wils. 72.

— (as distinguished from "descent"). 23 N. Y. 331; 1 Bl. Com. 215.

— (to acquire a settlement by, what is necessary). 14 Johns. (N. Y.) 200.

— (of promissory note). 20 Johns. (N. Y.) 290.

— (in technical sense). 6 J. J. Marsh. (Ky.) 584.

— (in a statute). 7 Ind. 607; 9 Cow. (N. Y.) 437, 507; 12 How. (N. Y.) Pr. 98; 29 Wis. 383.

— (in a will). 4 Rawle (Pa.) 75; 4 Wheel. Am. C. L. 382.

PURCHASE MONEY.—The money agreed to be paid by a purchaser, for property, especially real property.

PURCHASE MONEY, (defined). 38 Md. 270.

— (in a statute). 10 Barb. (N. Y.) 91; 15 Id. 568, 572.

— (what is, of a homestead). 37 Ill. 438; 50 Id. 521; 66 Id. 164.

PURCHASE, MY LATE, (in a will). 1 Whart. (Pa.) 264.

PURCHASE, SHALL HAVE LIBERTY TO, (in a covenant). 8 Wheel. Am. C. L. 289.

PURCHASE, WORDS OF.—Those by which, taken absolutely, without reference to or connection with any other words, an estate first attaches, or is considered as commencing in point of title, in the person described by them; such as the words "son," "daughter."

PURCHASED, (defined). 48 Vt. 166.

— (notes pledged are not). 2 Hall (N. Y.) 477.

— (in a testamentary appointment). L. R. 17 Eq. 426.

PURCHASER means, (1) a person who buys property (see **VENDOR AND PURCHASER**); (2) a person who acquires land by purchase in the technical sense of the word (see **PURCHASE**); (3) a person who acquires land otherwise than by descent. It is in the last sense that the term is used in the English Inheritance Act and the statutes of descent in the several States. See **DESCENT**, § 5.

PURCHASER, (who is). 4 Iowa 571; 11 Id. 174; 10 Mass. 436; 25 Mich. 381; 3 Grant (Pa.) Cus. 281; 1 Rawle (Pa.) 231; 7 Serg. & R. (Pa.) 82; 3 Atk. 610.

— (who is not). 2 Johns. (N. Y.) Ch. 603; 2 Binn. (Pa.) 40; 4 Yeates (Pa.) 112; 9 Bing. 76; 2 P. Wms. 491; 1 Chit. Gen. Pr. 336.

— (does not include a devisee). 2 Halst. (N. J.) Ch. 325.

— (in a commercial sense). Wilberf. Stat. L. 124.

— (in a statute). 1 Pet. (U. S.) 552; 1 Gr. (N. J.) 55; 1 Edw. (N. Y.) 652; 4 Id. 239 n.; 5 Johns. (N. Y.) Ch. 329, 331; 1 N. Y. Leg. Obs. 42, 45; 45 Superior (N. Y.) 404, 411.

PURCHASER, BECAME THE, (in a declaration). 1 Car. & P. 586.

PURCHASER, BONA FIDE, (defined). 46 Ala. 73.

— (who is not). 4 Paige (N. Y.) 215; 5 Id. 493.

— (in a statute). 28 Ga. 170; 42 Id. 250.

PURCHASER FOR A VALUABLE CONSIDERATION, (who is). 2 Munf. (Va.) 363; 2 W. Bl. 1019.

PURCHASER IN GOOD FAITH, (defined). 46 Ala. 73.

PURCHASER OF A NOTE OR BILL.—The person who buys a promissory note or bill of exchange from the holder without his indorsement. In such cases, if the note or bill should turn out to be bad, the purchaser has no claim against the vendor, unless the latter knew at the time of the sale that it was of no value. See **Bayl. Bills** 370.

PURCHASERS, (in recording acts). 16 Wall. (U. S.) 352.

PURE VILLENAGE.—A base tenure, where a man holds, upon terms of doing whatsoever is commanded of him, and is always bound to an uncertain service. 1 Steph. Com. (7 edit.) 188.

PURGATION.—The clearing a person's self of a crime of which he was publicly suspected and accused before a judge. It was either canonical, which was prescribed by the canon law, the form whereof, used in the spiritual court, was that the person suspected took his oath that he was clear of the facts objected against him, and brought his honest neighbors with him to make oath that they believed he swore truly; or vulgar, which was by fire or water ordeal, or by combat. It is entirely abolished. See 1 Steph. Com. (7 edit.) 407; and 4 Broom & H. Com. 432, 466.

PURGE.—See CONTEMPT, § 4.

PURGING A TORT.—Is like the ratification of a wrongful act by a person who has power of himself to lawfully do the act. But unlike ratification, the purging of the tort may take place even after commencement of the action. Hull v. Pickersgill, 1 Brod. & B. 282.

PURITANS.—See DISSENTERS.

PURLIEU.—NORMAN-FRENCH: *purale* (Britt 129 a), *pourellee*, a perambulation; from Latin, *perambulation*.

A certain territory of ground adjoining a forest, bounded with immovable boundaries known by matter of record only, which territory was once forest and afterwards disafforested again by the perambulations made for the severing of the new forests from the old, in accordance with the *Charta de Foresta*. Manw. 127; 4 Inst. 303. See FOREST.

PURLIEU-MEN.—Those who have ground within the purlieu to the yearly value of 40s. a year freehold, are licensed to hunt in their own purlieus. Manw. c. xx. § 8.

PURLOIN, OR EMBEZZLE, (in a bond). 10 Mod. 150.

PURPARTY is an old word for share or portion, (Britt. 184 a, 187 a; Litt. § 262,) so that to hold land in purparty with a person is to hold it jointly with him. Litt. § 260.

PURPORT, (defined). 1 Chit. Cr. L. 234; Stark. Cr. Pl. 114.

— (distinguished from "tenor"). 5 Blackf. (Ind.) 458; 2 Wils. 151.

PURPORT AND EFFECT FOLLOWING, (in a promissory note). 5 Wheel. Am. C. L. 451.

PURPORTING, (in a declaration). 8 Bing. 256; 1 Marsh. 522; 6 Taunt. 169.

— (in an indictment). 3 Brod. & B. 201; 1 East 173, 180; 2 Leach C. C. 657; 8 Mod. 93; East P. C. 883, 980, 982.

— (in a statute). 7 Moo. 1; 10 Price 88.

PURPORTING TO BE THE WILL, (in an indictment). 2 W. Bl. 790.

PURPOSE OF PROFIT, (in 7 and 8 Vict. c. 110, § 2). 16 Jur. 450.

PURPOSELY, (defined). 23 Ind. 231, 262.

— (synonymous with "intentionally," "designedly"). 23 Ind. 231.

— (equivalent to "with intent"). 17 Ind. 307.

PURPOSES, BENEVOLENT, (in a will). 3 Meriv. 17.

PURPOSES WHATEVER, FOR ALL, (in a policy of insurance). 15 East 284.

PURPRESTURE is where an erection or inclosure is made on any part of the king's demesnes, or on a highway, or a common street or public water, or the like. The term is derived from the Norman-French *purprendre*, to encroach or inclose, (Co. Litt. 277 b; Britt. 30 b,) and is not now much used, the offense being more commonly called a "common nuisance" (*q. v.*) See USURPATION.

PURPRESTURE, (defined). 34 Mich. 462; 2 Abb. (N. Y.) N. Cas. 211, 213.

PURPRISE.—A close or inclosure; as also the whole compass of a manor.

PURPURE, or PORPRIN.—An heraldic term for the color commonly called "purple," expressed in engravings by lines in bend sinister. In the arms of princes it was formerly called *Mercury*, and in those of peers *Amethyst*.

PURSE, PRIZE, OR PREMIUM, (construed). 81 N. Y. 539.

PURSER.—The person appointed by the master of a ship or vessel, whose duty it is to take care of the ship's books, in which every thing on board is inserted, as well the names of mariners as the articles of merchandise shipped. (Roc. Ins. n.)—*Bowrier*.

PURSUANCE.—Prosecution; process.

PURSUE.—To pursue a warrant or authority, in the old books, is to execute it or carry it out. Co. Litt. 52 a. See EXECUTE.

PURSUER.—A plaintiff is so called in Scotch law.

PURUS IDIOTA.—A congenital idiot. See 2 Steph. Com. (7 edit.) 509.

PURVEYANCE.—An ancient prerogative of the crown, until resigned by Car. II. Under *Magna Charta* the king was not to take any one's goods on credit, but was to pay a fair cash price; and he was not to take any one's carriage or timber unless by consent of the owner. The prerogative, or something analo-

gons to it would be re-ative in time of war, or upon the proclamation of martial law. See PREROGATIVE.

PURVIEW.—NORMAN-FRENCH: *purveu est*; LATIN: *provisum est*, used in the enacting part of old statutes. See for example Stat. 3 Edw. I. in the Revised Statutes.

That part of a statute which provides or enacts, as opposed to the preamble, which recites the reason or occasion for the statute. (12 Co. 20.) Hence, a case is said to be within the purview of an act when it falls within its provisions.

PUT IN SUIT, NO BOND SHALL BE, (equivalent to "no action shall be brought," or "no proceedings shall be had or taken"). 2 Bing. N. C. 7, 13.

PUT OFF COUNTERFEIT MONEY, (in a statute). 3 Car. & P. 410.

PUTAGE, PUTAGIUM.—Incontinence. —*Spel. Gloss.; Cowell.*

Putagium hæreditatem non adimit (1 Reeves Hist. c. iii. 117): Incontinence does not take away an inheritance.

FUTATIVE.—Supposed; reputed.

PUTATIVE FATHER.—The alleged or reputed father of an illegitimate child is so called. See AFFILIATION; BASTARD.

PUTS AND CALLS.—A "put" in the language of the grain or stock market, is a privilege of delivering or not delivering the subject-matter of the sale; and a "call" is a privilege of calling or not calling for it. (Pixley v. Boynton, 79 Ill. 351.) Such privileges, when taken by persons who are endeavor-

ing to effect what is technically called a "corner" in the market, are wager contracts, and void, both as against public policy, and because in contravention of the gaming act. *In re Chandler*, 9 Bankr. Reg. 514; *Ex parte Young*, 6 Biss. (U. S.) 53.

PUTS AND REFUSALS.—In English law, time-bargains, or contracts for the sale of supposed stock on a future day. They were forbidden by the 7 Geo. II. c. 3, § 1 (The Stock Jobbing Act), repealed by 23 and 24 Vict. c. 28. See GAMING; PUTS AND CALLS.

PUTTING IN FEAR.—One of the essential elements of the crime of robbery (*q. v.*) is the "putting in fear" of the person robbed, *i. e.* there must be a violent taking to distinguish the offense from larceny from the person; but violence being proved, the putting in fear will be presumed. 2 East P. C. 711.

PUTTING IN FEAR, (in a statute). 7 Mass. 243.

PUTTING IN SUIT.—As applied to a bond, or any other legal instrument, signifies bringing an action upon it, or making it the subject of an action.

PUTURE.—A custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse's meat, and dog's meat, of the tenants and inhabitants within the perambulation of the forest, hundred, &c. The land subject to this custom is called *terra putura*. Others who call it *pulture*, explain it as a demand in general; and derive it from the monks, who, before they were admitted, *pulsabant*, knocked at the gates for several days together. (4 Inst. 307.)—*Cowell.*

Q.

Q. V.—An abbreviation of *quod vide*, used to refer a reader to the word, chapter, &c., the name of which it immediately follows.

QUA.—In the character of; in virtue of being. 1 East 195; 8 *Id.* 433.

QUACUNQUE VIA DATA.—Which ever way you take it.

QUADRAGESIMA.—The time of Lent, because consisting of forty days.

QUADRAGESIMALS.—Offerings formerly made, on Mid-Lent Sunday, to the mother church.

QUADRAGESIMS.—The third part of the year-books of Edward III. 3 Reeves Hist. Eng. Law c. xvi. 148.

QUADRANS.—In the civil law, the fourth of a whole.

QUADRANT.—An angular measure of ninety degrees.

QUADRANTATA TERRÆ.—A quarter of an acre, now called a "rood."

QUADRARIUM.—In old records, a stone-pit or quarry.—*Cowell.*

QUADRIENNIUM UTILE.—In the Scotch law, the term of four years allowed to a

minor after his majority, in which he might by suit or action endeavor to annul any deed to his prejudice granted during his minority.—*Bell Dict.*

QUADRIPARTITE.—Having four parties; divided into four parts. An indenture or other instrument executed in four parts, and by four different parties.

QUADROON.—The offspring of a white person and a mulatto; a person having three-fourths white and one-fourth African blood.

QUADRUPLATOIRES.—Informers among the Romans, who, if their information were followed by conviction, had the fourth part of the confiscated goods for their trouble.—*Wharton.*

QUADRUPLICATION.—In the civil law, a surrebutter. Colquh. Rom. Civ. L. § 2267.

Quæ ab hostibus capiuntur, statim capientium fiunt (2 Burr. 693): Things which are taken from enemies immediately become the property of the captors.

Quæ ab initio inutilis fuit institutio ex post facto convallescere non potest (D. 50, 17, 210). That which was a useless institution at the commencement cannot grow strong by an after-fact.

Quæ accessionum locum obtinent extinguuntur cum principales res peremptæ fuerint (2 Poth. Oblig. 202): Those things which are incidents are extinguished when the principals (to which they are incident) are extinguished.

Quæ ad unum finem loquuta sunt, non debent ad aliud detorqueri (4 Co. 14): Those words which are spoken to one end, ought not to be perverted to another.

Quæ cohærent personæ a persona separari nequeunt (Jenk. Cent. 28): Things which belong to the person ought not to be separated from the person.

Quæ communi legi derogant stricte interpretantur (Jenk. Cent. 221): Those things which derogate from the common law are to be strictly interpreted.

Quæ contro rationem juris introducta sunt, non debent trahi in consequentiam (12 Co. 75): Things introduced contrary to the reason of law ought not to be drawn into a precedent.

Quæ dubitationis causa tollendæ inseruntur communem legem non lædunt (Co. Litt. 205): Things which are inserted for the purpose of removing doubt, hurt not the common law.

QUÆ EST EADEM.—Which is the same. In trespass and other actions, when the

plea necessarily stated the trespass to have been committed at some other time, place, &c., than that laid in the declaration, it was usual before the conclusion of the plea, to allege that the supposed trespasses mentioned in the plea were the same as those whereof the plaintiff had complained. This allegation was usually termed *quæ est eadem*. It was equivalent to a traverse of the time and place named in the declaration. 1 Chit. Pl. 581.

Quæ in curia regis acta sunt rite agi præsumuntur (3 Buls. 43): Things done in the king's court are presumed to be rightly done.

Quæ in partes dividi nequeunt solida a singulis præstantur (6 Co. 1): Services which are incapable of division are to be performed in whole by each individual.

Quæ in testamento ita sunt scripta, ut intelligi non possint, perinde sunt ac si scripta non essent (D. 50, 17, 73, § 3): Those things which in a testament are so written as not to be intelligible, are regarded as if they had not been written.

Quæ incontinenti vel certo fiunt, inesse videntur (Lofft 591): Things which are done directly and certainly, appear to be inherent.

Quæ inter alios acta sunt nemini nocere debent, sed prodesse possunt (6 Co. 1): Transactions between strangers ought to hurt no man, but may benefit.

Quæ legi communi derogant non sunt trahenda in exemplum: Things derogatory to the common law are not to be drawn into a precedent.

Quæ legi communi derogant stricte interpretantur (Jenk. Cent. 29): Those things which are derogatory to the common law are to be strictly interpreted.

Quæ mala sunt inchoata in principio vix bono peraguntur exitu (4 Co. 2): Things bad in principle at the commencement seldom achieve a good end.

Quæ non fieri debent, facta valent: Things which ought not to be done, when done, may be valid.

Quæ non valesant singula, juncta juvant (3 Buls. 132): Things which do not avail when separate, when joined avail.

QUÆ NON VALEANT SINGULA, JUNCTA JUVANT, (applied). Broom Max. 588.

QUÆ FLURA.—A writ which lay where an inquisition had been taken by an escheator of lands, &c., of which a man died seised, and all the land was supposed not to be found by the office or inquisition; it was to inquire of "what more" lands or tenements the party died seised. —*Reg. Orig.* 298. Rendered useless by 12 Car. II. c. xxiv.

Quæ præter consuetudinem et morem majorum fiunt, neque placent, neque recta videntur (4 Co. 78): Things which are done contrary to the custom and usage of our ancestors neither please nor appear right.

Quæ propter necessitatem recepta sunt, non debent in argumentum trahi (D. 50, 17, 162): Things admitted on account of necessity should not be drawn in question.

Quæ rerum natura prohibentur, nulla lege confirmata sunt (Finch 74): Things which are prohibited by the nature of things are confirmed by no law.

Quæ sunt minoris culpæ sunt majoris infamiæ (Co. Litt. 6): Things which are of the smaller guilt are of the greater infamy.

Quæcunque intra rationem legis inveniuntur, intra legem ipsam esse judicantur (2 Inst. 689): What things soever appear within the reason of a law, are to be considered within the law itself.

Quælibet concessio domini regis capi debet stricte contra dominum regem, quando potest intelligi duabus viis (3 Leon. 248): Every grant of our lord the king ought to be taken strictly against our lord the king, when it can be understood in two ways.

Quælibet concessio fortissime contra donatorem interpretanda est (Co. Litt. 183): Every grant is to be most strongly taken against the grantor.

Quælibet jurisdictio cancellos suos habet (Jenk. Cent. 137): Every jurisdiction has its own bounds.

Quælibet narratio super brevi locari debet in comitatu in quo breve emanavit: Every count upon the writ ought to be laid in the county in which the writ arose.

Quælibet pardonatio debet capi secundum intentionem regis, et non ad deceptionem regis (3 Buls. 14): Every pardon ought to be taken according to the intention of the king, and not to the deception of the king.

Quælibet pœna corporalis, quamvis minima, major est quælibet pœna pecuniaria (3 Inst. 220): Every corporal punishment, although the very least, is greater than any pecuniary punishment.

QUÆRE.—Question; query. A word used in the reports to indicate that a point or question arising in the case is not decided, and is deemed doubtful.

QUÆRENS.—A plaintiff; the plaintiff.

QUÆRENS NON INVENTIT PLEGIUM.—The plaintiff has not found pledge. A return made by a sheriff upon certain writs directed to him with this clause: *Si A. fecerit B. securum de clamore suo prosequendo, &c.*—F. N. B. 38.

Quærere dat sapere quæ sunt legitima vere (Litt. § 443): To inquire into is the way to know what things are truly lawful.

Quæritur ut crescant tot magna volumina legis; in promptu causa est, crescit in orbe dolus (3 Co. 82): It is questioned how so many books of law increase; the reason is plain, deceit increases in the world.

QUÆSTA.—An indulgence or remission of penance, sold by the pope.

QUÆSTIO.—In the civil law, a commission to inquire into a criminal matter. Inquiry by the torture.

QUÆSTIONARI.—Those who carried *quæsta* about from door to door.

QUÆSTIONES PERPETUÆ.—In Roman law, were commissions (or courts) of inquisition into crimes alleged to have been committed. They were called "*perpetuæ*," to distinguish them from *occasional* inquisitions, and because they were permanent courts for the trial of offenders.—*Brown*.

QUÆSTOR, or QUESTOR.—A Roman magistrate.

QUÆSTUS.—That estate which a man has by acquisition or purchase, in contradistinction to *hereditas*, which is what he has by descent. Glanv. 1, 7, c. 1.

QUAKER.—The name of a member of a religious society, more correctly denominated Friend. The nature of their creed was for a long time misrepresented and unknown; but since they have laid it before the public, they have enjoyed from the various parties of the Christian church a high degree of consideration and respect. They were once called "seekers," and the term "quakers" arose out of the frequent exhortations to "tremble at the name of the Lord," given by this sect to their followers. Indeed, a story is related that Fox having given this command to a justice of the peace, was by him derided and called a "quaker." It seems likely, however, since the term was in very general use, that it took its origin from the earnest and trembling voice and action of all the preachers of the sect. But there is another conjecture on the subject, which has obtained the support of Malone. This

would reier "quaker" to "quacker," and rests on the following lines written by Sir G. Wharton, in 1660:

"Let's tear our ribbons, burn our richer laces,
Wear russet, and outrive bewitched faces;
With thee and thou 't us go quack awblie."

As to affirmations by "quakers" instead of oaths, see AFFIRMED § 8.—*Wharton*.

QUALE JUS.—A judicial writ, which lay where a man of religion had judgment to recover land before execution was made of the judgment; it went forth to the escheator between judgment and execution, to inquire what *right* the religious person had to recover, or whether the judgment were obtained by the collusion of the parties, to the intent that the lord might not be defrauded. Reg. Jud. 8.

QUALIFICATION.—(1) The circumstance or group of circumstances whereby an individual is rendered eligible for an office, or to perform some public duty or function, is called his "qualification," *e. g.* in a case of the directors of public and joint stock companies, with whom the possession of a prescribed number of shares is usually made the qualification. (2) Any incident annexed to a right, *e. g.* an inherent reciprocal obligation, is also called a "qualification" of the right.

QUALIFICATION, (in act of congress). 1 Dill. (U. S.) 435.

QUALIFICATION FOR OFFICE, (defined). 64 Mo. 89.

QUALIFICATIONS, (defined). 10 Bush (Ky.) 744; 17 B. Mon. (Ky.) 785.

QUALIFIED.—A term applied, in England, to a person enabled to hold two benefices.

QUALIFIED, (defined). 10 Bush (Ky.) 744; 17 B. Mon. (Ky.) 785.

— (when a sheriff has). 12 Wend. (N. Y.) 276.

QUALIFIED, DULY, (in by-laws of corporation). 9 Pick. (Mass.) 83.

QUALIFIED ELECTOR, (defined). 23 Wis. 358.

QUALIFIED FEE.—See FEE, § 4.

QUALIFIED INDORSEMENT.—An indorsement *sans recours*, *i. e.* without recourse to the indorser for payment. Byles Bills (11 edit.) 151.

QUALIFIED OATH.—A circumstantial oath. See OATH, §§ 2, 3.

QUALIFIED PROPERTY.—An ownership of a special and limited kind. It may arise either from the peculiar circumstances of the subject-matter, which

render it incapable of being under the absolute dominion of any proprietor, as in the case of animals, *feræ naturæ*, or from the peculiar circumstances of the owner, the thing itself being capable of absolute ownership, as in the case of a bailment.

QUALIFIED PROPERTY, (defined). 2 Kent Com. 347; 2 Bl. Com. 391, 452.

QUALIFY.—To become qualified.

Qualitas quæ inesse debet, facile præsumitur (Jur. Civ.): A quality which ought to form a part is easily presumed.

QUALITY, (in a contract for the sale of coal). 3 Bosw. (N. Y.) 336, 344.

QUALITY OF ESTATE.—The period when, and the manner in which, the right of enjoying an estate is exercised. It is of two kinds: (1) The period when the right of enjoying an estate is conferred upon the owner, whether at present or in future; and (2) the manner in which the owner's right of enjoyment of his estate is to be exercised, whether solely, jointly, in common, or in coparcenary. See ESTATE, § 6 *et seq.*

Quam longum debet esse rationabile tempus non definitur in lege, sed pendet ex discretione justiciariorum (Co. Litt. 56): How long *reasonable time* ought to be, is not defined by law, but depends upon the discretion of the judges.

Quamdiu se bene gesserit: As long as he shall behave himself well. A clause frequent in letters-patent or grants of certain offices, to secure them so long as the person to whom they are granted shall not be guilty of abusing them. See DUM BENE SE GESSERIT.

Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum (2 Inst. 564): Although a thing in itself may not be bad, yet, if it hold out a bad example, it is not to be done.

Quamvis lex generaliter loquitur, restringenda tamen est, ut, cessante ratione, ipsa cessat (4 Inst. 330): Although a law speaks generally, yet it is to be restrained, so that when its reason ceases, it should cease itself.

Quando abest provisio partis, adest provisio legis (see 13 Com. B. 980): When provision of party is lacking, provision of law is present.

QUANDO ACCIDERINT.—See JUDGMENT, § 12.

QUANDO ACCIDERINT, (in a judgment). 1 Watts (Pa.) 413.

Quando aliquid conceditur, &c.: Where anything is granted, that also is deemed to be impliedly granted with it without which the principal subject-matter of the grant (*i. e.* the express grant) could not be enjoyed (*id quod concedi videtur, sine quo res ipsa percipi non debeat*). When mines are granted or reserved apart from the surface, a right of entry (in the absence of other access to them) would be impliedly granted or reserved.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud (5 Co. 116): When anything is commanded, everything by which it can be accomplished is also commanded.

It is one of the rules affecting the law of principal and agent, that the latter's authority includes all medium powers "*per quod pervenitur ad illud*."

Quando aliquid prohibetur ex directo, prohibetur et per obliquum (Co. Litt. 223): When anything is prohibited directly, it is prohibited also indirectly.

Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud (2 Inst. 48): When anything is prohibited, everything which tends towards it is prohibited.

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quæ clausulæ generali sunt consentanea, interpretanda est charta secundum verba specialia (8 Co. 154): When a charter contains a general clause, and afterwards descends to special words, which are agreeable to the general clause, the charter is to be interpreted according to the special words.

Quando de una et eadem re duo onerabiles existunt, unus, pro insufficientia alterius, de integro onerabitur (2 Inst. 277): When there are two persons liable for one and the same thing, one for the other's default will be charged for the whole.

Quando dispositio referri potest ad duas res ita quod secundum relationem unam vitietur et secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio (6 Co. 76): When a disposition may refer to two things, so that by the former it would be vitiated, and by the latter it would be preserved, then the relation is to be made to the latter, so that the disposition may be valid.

Quando diversi desiderantur actus ad aliquem statum perficiendum, plus respicit lex actum originalem (10 Co. 49): When to the perfection of an estate divers acts are requisite, the law has more regard to the original act.

Quando duo jura concurrunt in una persona, æquum est ac si essent in diversis (4 Co. 118): When two rights concur in one person, it is the same as if they were in separate persons.

This is only another form of the maxim *unus homo sustinet plures personas*.

Quando jus domini regis et subditi concurrunt, jus regis præferri debet (9 Co. 129): When the right of king and of subject concur, the king's right should be preferred.

Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsæ esse non potest (5 Co. 47): When the law gives a man anything, it gives him that also without which the thing itself cannot exist.

If A. grant to B. a piece of land surrounded on all sides by other land of A.'s, B. will (in case there be no right of way to his land) have a right of way over A.'s surrounding land. The application of this maxim is very limited, and it refers more especially to contracts under seal.

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur (2 Inst. 326): When the law gives anything to any one, all incidents are tacitly given.

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda (2 Inst. 83): When the law is special, but its reason general, the law is to be understood generally.

Quando licet id quod majus, videtur et licere id quod minus (Shep. Touch. 429): When the greater is allowed, the less seems to be allowed also.

Quando mulier nobilis nupserit ignobili, desinit esse nobilis nisi nobilitas nativa fuerit (4 Co. 118): When a noble woman marries a man not noble, she ceases to be noble, unless her nobility was born with her.

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est (5 Co. 115): When more is done than ought to be done, that too seems to be done which still remains to be done.

Quando res non valet ut ago, valeat quantum valere potest (Cowp. 600): When anything does not operate in the way one intends, let it operate as far as it can.

In *Roe v. Tramarr*, 2 Sm. Lead. Cas. 530, a deed purporting to be a release, which could not operate as such because it attempted to convey a freehold "in futuro," was held valid under the circumstances as a covenant to stand seized. A lease in writing but not under seal, is not absolutely void, but held good in equity as an agreement for a lease.

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum (10 Co.

191): When the words of a statute are special, but the reason general, the statute is to be understood generally.

QUANTI MINORIS.—Of how much less. A peculiar form of action in use in Louisiana, to obtain a reduction in the price of a thing sold, because of defects discovered subsequent to the sale.

QUANTITY, (how averred in an indictment). 4 Com. Dig. 681 n.; Stark. Cr. Pl. 218.
—— (what is a devise of). 2 Atk. 599; 3 Id. 121.

QUANTITY OF BANK BILLS, (in an indictment for larceny). 12 Allen (Mass.) 453.

QUANTITY OF ESTATE.—Its time of continuance, or degree of interest as in fee, during life, or for years. *See* ESTATE, § 4.

QUANTITY OF FISH, GEESSE AND DUCKS, (in an indictment). 1 East 583.

QUANTUM DAMNIFICATUS.—How much is he damnified. This was an issue directed by Chancery to be tried at law to fix the amount of compensation for damage.

QUANTUM MERUIT.—As much as he has earned or deserved. If a person enters into a contract to do services for another, and either the contract is put an end to before they are completed, or they are not rendered in the manner provided by the contract, the contractor is obviously not entitled to be paid his contract price, but in some cases he is entitled to be paid the actual value of his services; and if he brings an action to recover it, he is said (in the language of the common law) to sue on a *quantum meruit*. Thus, where a party to a contract refuses to perform his part of it, the other has the right to rescind it, and to sue on a *quantum meruit* for the services which he had done under it previous to the rescission. *Cutter v. Powell*, 6 T. R. 320; 2 Sm. Lead. Cas. 1; Chit. Cont. 527. As to an equitable *quantum meruit*, see *In re Empress Engineering Co.*, 16 Ch. D. 125. *See* QUANTUM VALEBANT.

Quantum tenens domino ex homagio, tantum dominus tenenti ex dominio debet præter solam reverentiam; mutua debet esse domini et homagii fidelitatis connexio (Co. Litt. 64): As much as the tenant by his homage owes to his lord, so much is the lord, by his lordship, indebted to the tenant, except reverence alone; the tie of dominion and of homage ought to be mutual.

QUANTUM VALEBANT.—As much as they were worth. If a person contracts to supply goods of a certain kind, and supplies goods of a different kind, and the other party does not avail himself of the right of rejecting them, the former, although he cannot claim the price payable under the contract (for it has not been performed), can claim the actual value of the goods supplied; and if he brings an action for it, he is said, in the language of the common law, to sue on a *quantum valebant*. Chit. Cont. 421; 2 Sm. Lead. Cas. 20 *et seq.*

QUARANTINE.—Literally a period of forty days. (1) The expression is now chiefly used to denote the period (whether forty days or not) which persons coming from a country or ship in which an infectious disease is prevalent are obliged to wait before they are permitted to land. (Stat. 6 Geo. IV. c. 78; 3 Steph. Com. 171; 2 Bl. Com. 135, n. (a)) (2) It also signifies the forty days during which a widow is entitled to remain in her husband's dwelling-house after his death. (*Magna Charta* c. vii.; Digby Hist. R. P. 95; 2 Inst. 16; Co. Litt. 82b.) This matter is regulated by statute in the several States, in some of which the period is one year, in others forty days, and in others until dower is assigned.

QUARE.—Wherefore; why; for what reason.

QUARE CLAUSUM FREGIT.—Wherefore he broke the close. A plea in trespass which operates as a denial that the defendant committed the alleged trespass in the place mentioned; but if it is intended to deny the plaintiff's possession, or right of possession, it must be traversed specially, as well as all matters in discharge, justification, or excuse. *See* TRESPASS.

Quare ejecit infra terminum: Wherefore he ejected within the term. A writ which lay by the ancient law where the wrong-doer or ejector was not himself in possession of the lands, but another who claimed under him.—*Reg. Orig.* 227.

QUARE IMPEDIT.—Why he obstructs. An action of *quare impedit* lies, in England, to enforce the right to present to a benefice. If, on a vacancy of a living taking place, two persons

present clerks to the bishop, the person rightfully entitled to present should commence an action of *quare impedit* in the High Court against the bishop, the pretended patron, and his clerk, in order to determine the question of right and prevent his opponent's clerk from obtaining (or retaining) the benefice. An action of *quare impedit* also lies against the bishop if he refuses to admit a clerk on the ground of incapacity or the like. (Phillim. Ecc. L. 451; 3 Steph. Com. 416; Jud. Act, 1875, App. A., part ii., § 4.) The trial is generally by jury, but in some instances (it is said) by certificate. Steph. Com. 611; see Rules of Court, xxxvi., 26. See TRIAL; see, also, JUS PATRONATUS.

QUARE INCUMBRAVIT.—Why he incumbered. A writ which lay against a bishop, who, within six months after the vacation of a benefice, conferred it on his clerk, whilst two others were contending at law for the right of presentation, calling upon him to show cause why he had incumbered the church.—*Reg. Orig.* 32. Abolished by 3 and 4 Will. IV. c. 27.

QUARE INTRUSIT.—Why he intruded. A writ that formerly lay where the lord proffered a suitable marriage to his ward, who rejected it, and entered into the land, and married another, the value of his marriage not being satisfied to the lord. Abolished by 12 Car. II. c. 24.

QUARE NON ADMISIT.—Wherefore he did not admit. A writ to recover damages against a bishop who does not admit a plaintiff's clerk. It is, however, rarely or never necessary; for it is said that a bishop refusing to execute the writ *ad admittendum clericum*, or making an insufficient return to it, may be fined. Wats. Cler. Law 302.

QUARE NON PERMITTIT.—An ancient writ, which lay for one who had a right to present to a church for a turn against the proprietary. Fleta l. 5, c. vi.

QUARE OBSTRUXIT.—Wherefore he obstructed. A writ which lay for him who, having a liberty to pass through his neighbor's ground, could not enjoy his right, because the owner had obstructed it. Fleta l. 4, c. xxvi.

QUARENTENA TERRÆ.—A furlong. Co. Litt. 5 b.

QUARREL.—This word is said to extend not only to real and personal actions, but also to the causes of actions and suits; so that by the release of all quarrels, not only actions pending but also causes of actions and suit are released; and quarrels, controversies, and debates are in law considered to have one and the same signification. (Co. Litt. 8, 158; *Termes de Ley.*)—*Brown.*

QUARRELS, (release of all). 7 Com. Dig. 230.

QUARRY, (widow's right of dower in). 10 Pick. (Mass.) 460; 4 Wheel. Am. C. L. 564; Sty. 68.

QUART.—The fourth part of a gallon.

QUARTER.—(1) The fourth part of a thing. (2) A length of four inches.

QUARTER-DAYS.—The days which begin the four quarters of the year, and upon which rent payable quarterly becomes due.

QUARTER-DOLLAR.—A silver coin of the United States, of the value of twenty-five cents.

QUARTER-EAGLE.—A gold coin of the United States, of the value of two and a half dollars.

QUARTER OF A YEAR.—Ninety-one days. Co. Litt. 135 b.

QUARTER OF A YEAR, (consists of how many days). Dyer 345; 2 Bl. Com. 140 n.

QUARTER-SEAL.—The seal kept by the Director of the Chancery in Scotland. It is in the shape and impression of the fourth part of the great seal; and is in the Scotch statutes called the "testimonial of the great seal." Gifts of land from the crown pass this seal in certain cases.—*Bell Dict.*

QUARTER SESSIONS.—

§ 1. A court of record holden, in England, before two or more justices of the peace once in every quarter of the year for execution of the authority given them by the commission of the peace and certain statutes. Formerly their jurisdiction, in theory, extended to trying all misdemeanors and felonies, though in practice they sent the more serious cases to the assizes. Now, however, their jurisdiction to try cases of treason, murder, manslaughter, rape, perjury, forgery, frauds by agents, and numerous other serious offenses, has been taken away altogether, so that in those cases their jurisdiction ceases as soon as the indictment has been found. (Pritch. Quar. Sess. 7, 364 *et seq.*; Stats. 5 and 6 Vict. c. 38; 24 and 25 Vict. c. 96, s. 87.) The sessions in London and Middlesex are subject to special regulations. Pritch. Quar. Sess. 29; Stat. 7 and 8 Vict. c. 71. See ASSISTANT JUDGE.

§ 2. **Boroughs.**—A separate Court of Quarter Sessions may be granted to a borough, thus excluding the county justices from exercising jurisdiction within it. The court consists of the recorder (*q. v.*) alone. Stat. 5 and 6 Will. IV. c. 76, § 103 *et seq.*; Pritch. Quar. Sess. 15 *et seq.*

§ 3. Proceedings at quarter sessions consist (1) of the finding of bills or indictments by the grand jury (see BILL, § 3); (2) of the removal to the assizes of those indictments which the Court of Quarter Sessions has no jurisdiction to try; (3) of the trial of those indictments which

it has jurisdiction to try (*see* TRIAL); (4) of business falling within the original jurisdiction of the sessions, chiefly in matters relating to the preservation of the peace and the punishment of rogues and vagabonds; (5) of business within the appellate jurisdiction, which includes appeals from petty and special sessions in bastardy, highway, rating, removal of paupers, and licensing cases. *See* Pritch. Quar. Sess. *passim*. *See* JUSTICES OF THE PEACE.

QUARTER SESSIONS, (a mayor's court is a court of). 2 Watts (Pa.) 123.

QUARTERING TRAITORS.—The judgment for high treason, as prescribed by 54 Geo. III. c. 146, § 1, is that the person shall be drawn on a hurdle to the place of execution and be there hanged by the neck until he be dead; and that afterwards his head shall be severed from his body, and the body, divided into four quarters, shall be disposed of as her majesty shall think fit. Decapitation may, by warrant under the sign-manual, be substituted for hanging, and drawing to the place of execution may be dispensed with. *See* 4 Br. & H. Com. 97.

QUARTERIZATION.—Quartering of criminals.

QUARTERLY, (rent payable). 21 Wend. (N. Y.) 336.

— (promissory note with interest payable). 5 Paige (N. Y.) 98.

QUARTERS OF CORN, (in a covenant). 6 T. R. 328.

QUARTERS, THREE, (in a will). 15 Wend. (N. Y.) 342.

QUARTO DIE POST.—The fourth day inclusive after a return of a writ, and if a defendant appeared then it was sufficient; but this practice was afterwards altered. 3 Bl. Com. 278; 1 Tidd Pr. 107.

QUASH.—To discharge or set aside. Thus, an indictment may be quashed when it is so defective that no judgment can be given on it. Arch. Cr. Pl. 93. As to quashing an inquisition in lunacy, *see* Pope Lun. 69.

QUASI.—This word prefixed to a noun means that although the thing signified by the combination of "*quasi*" with the noun does not comply in strictness with the definition of the noun, it shares its qualities, falls philosophically under the same head, and is best marked by its approximation thereto. The titles next following furnish examples.

QUASI-CONTRACT.—The term "*quasi-contract*" is a modern abbreviation of the *obligatio quasi ex contractu* of the Romans.

§ 1. A *quasi-contract* is an obligation similar to that created by contract, but

not really arising by the consent of the person bound. Thus, in Roman law, if a person left his property without any one to look after it, a stranger might undertake the care of it, and had a right of action against the owner for his expenses (*actio negotiorum gestorum*); "and this is for the sake of utility, lest the affairs of persons suddenly called away without being able to arrange for their management, should be neglected, for no one would look after them if he had not a right of action for his expenses." 3 Just. Inst. 27, § 1.

§ 2. The term "*quasi-contract*" is unknown to the English law, although the thing itself exists. Thus, if, in the absence of a husband, I incur expense in burying the wife in a manner suitable to the husband's condition, though without his knowledge, I may sue him for my expenses, or, as it is said, the law will imply a promise by him to reimburse me. *Jenkins v. Tucker*, 1 H. Bl. 90; *see, also*, *Foster v. Ley*, 2 Bing. N. C. 269, cited *Leake Cont.* 41.

§ 3. Again, every one exercising an office or employment who undertakes a duty comprised in it, is bound to perform it with integrity, diligence and skill, independently of any special stipulation to that effect with his contractee. Thus, a common carrier is bound to carry his goods or passengers safely, and a solicitor, surgeon, engineer, &c., who undertakes a professional duty is bound to discharge it with integrity and skill, and if he does not he is liable for any damage caused by his default or negligence. "But if I employ a person to transact any of these concerns, whose common profession and business it is not, the law implies no such *general* undertaking, but, in order to charge him with damages, a *special* agreement is required." (2 Bl. Com. 166; *Broom Com.* L. 672.) The best example of a *quasi-contract* in English law is salvage (*q. v.*) *See* QUASI-TORT.

QUASI-CORPORATION.—*See* CORPORATION, § 6.

QUASI-CORPORATION, (defined). 2 Wall. (U. S.) 501; 13 Vr. (N. J.) 277.

QUASI-CRIME, or QUASI-DELICT.—The action of one doing damage or evil involuntarily. In the Roman law, the

quasi-delict was a tort indirectly and not directly occasioned by the party liable, and which could not be classified either as *furtum*, *rapina*, *damnum injuria*, or *injuria*. They were four in number, viz.: (1) *Qui iudex litem suam fecit*, being the offense of partiality or excess in the *iudex* (jurymen), e. g. in assessing the damages at a figure in excess of the extreme limit permitted by the formula. (2) *Dejectum effusumve aliquid*, being the tort committed by one's servant in emptying or throwing something out of an attic or upper story upon a person passing beneath. (3) *Damnum infectum*, being the offense of hanging dangerous articles over the heads of persons passing along the king's highway. (4) Torts committed by one's agents (e. g. stable-boys, shop-managers, &c.,) in the course of their employment.—*Brown*.

QUASI-DEPOSIT.—A kind of implied or involuntary bailment, which takes place where one person comes lawfully into the possession of property of another, by finding it. Story Bailm. § 85.

QUASI-DERELICT, (defined). 1 Newb. (U. S.) Adm. 449.

QUASI-EASEMENT.—An easement, in the proper sense of the word, can only exist in respect of two adjoining pieces of land occupied by different persons, and can only impose a negative duty on the owner of the servient tenement. Hence an obligation on the owner of land to repair the fence between his and his neighbor's land is not a true easement, but is sometimes called a "*quasi-easement*." Gale Easm. 516.

QUASI-ENTAIL.—A *quasi-entail* or *quasi-estate-tail* exists when an estate *pur autre vie* is limited to a person and the heirs of his body. Thus, if land is given to A. and the heirs of his body during the life of B., A. has a *quasi-entail*. A *quasi-entail* in possession may be barred by an ordinary deed of conveyance; if it is in remainder, the concurrence of the tenant for life is required. (Co. Litt. 20a, n. (5); Fearn Rem. 495; Wms. Real Prop. 60.) As to the effect of attempting to limit estate tail in chattels, see Wms. Pers. Prop. 315 *et seq.*; 1 White & T. Lead. Cas. 1.

QUASI-FREE.—An estate gained by wrong; for wrong is unlimited and uncontained within rules.

QUASI-PERSONALTY.—Things which are movable in point of law, though fixed to things real, either actually, as emblements (*fructus industriales*), fixtures, &c.; or fictitiously, as chattels-real, leases for years, &c.—*Wharton*.

QUASI-POSSESSION is to a right what possession is to a thing—it is the

exercise or enjoyment of the right, not necessarily the continuous exercise, but such an exercise as shows an intention to exercise it at any time when desired. When the right itself is exercised by means of possession of the thing which is the subject of the right, as in the case of ownership, the idea of *quasi-possession* does not arise, and hence the term is confined to those rights which merely give a limited power of using the thing, as in the case of easements and profits *à prendre*; it is, however, not much used in English law, the word "enjoyment" (*q. v.*) being more frequently employed. (Gale Easm. 207.) As to *quasi-possession* in Roman law, see Hunt. Rom. L.; Bruns. Recht des Besitzes.

QUASI-REALTY.—Things which are fixed in contemplation of law to realty, but movable in themselves, as heirlooms (or limbs of the inheritance), title deeds, court rolls, &c.—*Wharton*.

QUASI-TENANT AT SUFFERANCE.—An under-tenant, who is in possession at the determination of an original lease, and is permitted by the reversioner to hold over.

QUASI-TORT, though not a recognized term of English law, may be conveniently used in those cases where a man who has not committed a tort is liable as if he had. Thus, a master is liable for wrongful acts done by his servant in the course of his employment. (Broom Com. L. 690; Underh. Torts 29.) As to the use of the term "*quasi-tort*" to signify the breach of a *quasi-contract*, see TORT. Austin rejects "*quasi-tort*" or "*quasi-delict*" altogether. (Jurisp. 959). The ground of the liability is sometimes expressed by the rule *qui facit per alium facit per se* (Underh. Torts 29); but this is erroneous, that rule only applying to *authorized* acts; the true rule is *respondeat superior*. See Reg. v. Holbrook, 4 Q. B. D. 46, 51. See QUASI-CONTRACT; QUASI-CRIME.

QUASI-TRADITIO.—The placing a person in possession of a right.

QUASI-TRUSTEE.—A person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee. Lew. Trusts (4 edit.) 592, 638.

QUATUORVIRI.—Magistrates who had the care and inspection of roads among the Romans.

QUAY.—A wharf, or place for the loading or unloading of goods carried in ships or vessels. This word is sometimes spelled "key."

QUAY, (defined). 10 Pet. (U. S.) 662, 715.

QUE EST LE MESME.—Which is the same. A term used in actions of trespass, &c., for a direct justification of the very act complained of by the plaintiff as a wrong. *See QUE EST EADEM.*

QUE ESTATE.—*See* PRESCRIPTION, § 5.

QUEEN.—A woman who is sovereign of a kingdom. The queen regent, regnant, or sovereign, is she who holds the crown in her own right, as Queen Victoria, who has the same powers, prerogatives, rights, dignities, and duties as if she had been a king.

QUEEN ANNE'S BOUNTY.—By the Stat. 26 Hen. VIII. c. 3, certain duties, called "first fruits and tenths," which had up to that time been paid by the incumbents of ecclesiastical benefices to the pope, were made part of the revenues of the crown. Queen Anne determined to apply them to the augmentation of the livings of the poorer clergy, and under the provisions of the Stat. 2 and 3 Anne c. 20, she appointed certain persons to be a corporation to receive and apply for this purpose the first fruits and tenths, and also any gifts and benevolences given to them for the same purpose. They are called the "governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy." Phillim. Ecc. L. 2069, where the modern statutes relating to the bounty are given. *See* FIRST FRUITS.

QUEEN CONSORT.—The wife of the reigning English king. She is a public person, exempt and distinct from the king, for she is of ability to purchase lands, and to convey them, to make leases, to grant copyholds, and to do other acts of ownership, without the concurrence of her husband. She is also capable of taking a grant at common law from her husband, which no other wife can do. She has separate courts and offices distinct from the king's, not only in matters of ceremony, but even of law; and her attorney and solicitor-general are entitled to a place within the bar of his majesty's courts, together with the king's counsel. She may likewise be sued, and sue alone, without joining her husband; she is, indeed considered as a *feme sole*, and not as a *feme covert*. She pays no toll, nor is she liable to any fine in any court. As to the security of her life and person, she is placed on the same footing with the king. (*See* 1 Br. & H. Com. 256.)—*Wharton.*

QUEEN DOWAGER.—The widow of a deceased king. She enjoys most of the privileges belonging to her as queen consort. But it

is not treason to conspire her death or violate her chastity, because the succession to the crown is not thereby endangered. No man can marry her without special license from the crown, on pain of forfeiting his lands and goods. If she marry a subject, she does not lose her regal dignity, as dowager peeresses (if commoners by birth) do their peerages, when they marry commoners. (1 Br. & H. Com. 261.)—*Wharton.*

QUEEN GOLD.—A royal revenue which belonged to every queen consort during her marriage with the king, and was due from every person who made a voluntary offer or fine to the king amounting to ten marks or upwards, or in consideration of any privileges, grants, licenses, pardons, or other matters of royal favor conferred upon him by the king; it was due in the proportion of one-tenth part more, over and above the entire offering or fine made to the king, and became an actual debt of record to the queen's majesty, by the mere recording of the fine. But no such payment was due for any aids or subsidies granted to the king in parliament or convocation; nor for fines imposed by courts on offenders against their will, nor for voluntary presents to the king, without any consideration money from him to the subject, nor for any sale or contract whereby the revenues and possessions of the crown were granted away or diminished. It is now quite obsolete. (2 Steph. Com. (7 edit.) 446.)—*Wharton.*

QUEEN REGNANT, or REGENT.—She who holds the crown in her own right. *See* QUEEN.

QUEEN'S ADVOCATE.—An English advocate (*q. v.*) who holds, in the courts in which the rules of the canon and civil law prevail, a similar position to that which the attorney-general holds in the ordinary courts, *i. e.* he acts as counsel for the crown in ecclesiastical, admiralty and probate cases, and advises the crown on questions of international law. In order of precedence it seems that he ranks after the attorney-general. 3 Steph. Com. 275 n.; Man. S. ad L. 19, App. iv.

QUEEN'S BENCH.—

§ 1. The Court of Queen's Bench was one of the superior courts of common law, having in ordinary civil actions concurrent jurisdiction with the Courts of Common Pleas and Exchequer; it was, however, considered superior to them in dignity and power, its principal judge being styled the "Lord Chief Justice of England," and taking precedence over the other common law judges. (Formerly an appeal lay from the Common Pleas and Exchequer to the Queen's Bench.) It also had special jurisdiction over inferior courts, magistrates and civil corporations by the prerogative writ of *mandamus*, and (concurrently with the two other courts) by prohibition and *certiorari* (*q. v.*), and in proceedings by *quo warranto* and *habeas corpus*. The Queen's Bench was also the principal court of criminal jurisdiction in England; informations might be filed and indictments preferred in it in the first instance, and indictments from all inferior courts might be removed into it by *certiorari*, subject to

certain limitations. 3 Steph. Com. 331; 4 *Id.* 307; Stat. 35 and 36 Vict. c. 52. See CERTIORARI; INDICTMENT; INFORMATION.

§ 2. **Plea and crown sides.**—The Queen's Bench accordingly had two "sides" or sets of offices, namely the "plea side," in which civil business was transacted; and the "crown side," or "crown office," in which matters within the criminal and extraordinary jurisdiction of the court were transacted. See CROWN OFFICE IN THE QUEEN'S BENCH.

§ 3. It is said to have been called the "Queen's Bench" or "King's Bench," both because its records ran in the name of the king (*coram rege*), and because kings in former times have often personally sat there. Co. Litt. 71 b.

§ 4. **Queen's Bench Division.**—By the Judicature Act, 1873, the jurisdiction of the Court of Queen's Bench was transferred to the High Court of Justice. Its judges (namely, the lord chief justice and the five *puisné* justices) originally formed a separate division of the High Court, called the "Queen's Bench Division," and to it was assigned all business, civil and criminal, which was formerly within the exclusive cognizance of the Court of Queen's Bench. (Jud. Act, 1873, §§ 16, 31 *et seq.*) Now, however, the Common Pleas and Exchequer Divisions have been consolidated with it into one Division called the "Queen's Bench Division." See HIGH COURT OF JUSTICE.

QUEEN'S CORONER AND ATTORNEY.—An officer of the central office of the English Supreme Court (*q. v.*) He was an officer in the crown office of the Queen's Bench Division before that office was transferred to the central office. His duties are similar in kind to those discharged by the other common law masters. Second Rep. Legal Dep. Comm. 15; Judicature (Officers) Act, 1879, § 4 *et seq.* See MASTERS, § 1.

QUEEN'S CORONER AND ATTORNEY, (defined). 4 Bl. Com. 308, 309; 4 Steph. Com. 374, 378.

QUEEN'S COUNSEL.—Barristers who, by reason of their superior learning and talent, have obtained the appointment of counsel to her majesty. They wear silk gowns, sit within the bar, and take precedence in court over ordinary barristers. (Man. S. ad L. 25, 209.) They have no active duties to perform to the crown, but they must not be employed in any cause against the crown (*e. g.* in defending a prisoner) without special license. (3 Steph. Com. 273.) There are also queen's counsel in the County Palatine of Lancaster, who take precedence of other barristers in the palatine courts. Judicature Act, 1873, § 78. See BAR; BARRISTER; INNS OF COURT; SERGEANT-AT-LAW.

QUEEN'S, or STATE'S EVIDENCE.—When several persons are charged with a crime, and one of them gives evidence against his accomplices, on the promise of being granted a pardon, he is said to be admitted queen's, or, in

America, State's evidence. 4 Steph. Com. 395. See APPROVE, § 2.

QUEEN'S PRISON.—A jail which used to be appropriated to the debtors and criminals confined under process or by authority of the Superior Courts at Westminster, the High Court of Admiralty, and also to persons imprisoned under the bankrupt law. The 5 and 6 Vict. § 22, amended by 11 and 12 Vict. c. 7, and 23 and 24 Vict. c. 60, consolidated the Queen's Bench, Fleet and Marshalsea prisons. See the Queen's Prison Discontinuance Act, 1862, 25 and 26 Vict. c. 104.

QUEEN'S REMEMBRANCER.—An officer of the central office of the English Supreme Court. (Judicature (Officers) Act, 1879, § 4 *et seq.*) Formerly he was an officer of the Exchequer, and had important duties to perform in protecting the rights of the crown, *e. g.* by instituting proceedings for the recovery of land by writs of intrusion (*q. v.*), and for the recovery of legacy and succession duties; but of late years administrative changes have lessened the duties of the office, (Second Rep. Legal Dep. Comm. 17; Stat. 22 and 23 Vict. c. 21,) and on the next vacancy they will be consolidated with those of the senior master of the central office. Judicature Act, 1879, § 14.

QUEM REDDITUM REDDIT.—A real action by which the grantee of a rent could compel the tenants of the land out of which the rent issued to attain to him. (Shep. Touch. 254.) It was abolished by Stat. 3 and 4 Will. IV., c. 27, § 36. See ATTORNMENT.

Quemadmodum ad quæstionem facti non respondent iudices, ita ad quæstionem juris non respondent juratores (Co. Litt. 293): In the same manner that judges do not answer to questions of fact, so jurors do not answer to questions of law.

QUERELA.—An action preferred in any court of justice in which the plaintiff was *querens*, or complainant, and his complaint was *querela*, whence the use of the word "quarrel" in law. *Quiritus esse à querelâ* sometimes meant to be exempted from the customary fees paid to the king or lord of a court for liberty to prefer such an action; but more commonly it meant to be freed from the fines or amercements which would otherwise have been imposed upon the exempted person for trespasses and such like offenses.—*Cowell*.

QUERELA CORAM REGE A CONCILIO DISCUTIENDA ET TERMINANDA.—A writ by which one is called to justify a complaint of a trespass made to the king himself, before the king and his council.—*Reg. Orig.* 124.

QUERELE.—A complaint to a court.

QUERENTS.—A plaintiff; complainant; inquirer.

QUEST.—Inquest; inquisition; or inquiry.

QUESTION.—Interrogatory; anything inquired. *See* TORTURE.

QUESTION.—To impugn; also to inquire, as questioning a witness, which is examining him.

QUESTIONS, ALL LAWFUL, (in a statute). 2 Ves. & B. 250.

QUESTIONS OF FACT.—In general, when a jury is sworn it decides all the issues of fact; but if there arise in the course of the trial, a question of fact preliminary to the decision of a point of law, &c., *e.g.* the genuineness of a document as necessary to its being admitted in evidence, that question of fact must be decided by the judge. So in questions as to the competence of a witness to be sworn. (*See* VOIR DIRE.) The law of a foreign country is a question of fact.

QUESTIONS OF FACT, (distinguished from "issues of fact"). 70 N. C. 167.

QUESTIONS OF LAW arising in an action may be stated in the form of a special case (*q. v.*) for the opinion of the court, or in such other manner as the court may deem expedient. *See* further as to questions of law, FACT, § 3.

QUESTMAN, or QUESTMONGER.

—A starter of law suits or prosecutions; also, a person chosen to inquire into abuses, especially such as relate to weights and measures; also, a churchwarden. *See* Prid. Churchw. Guide.

QUESTUS.—Land which does not descend by hereditary right, but is acquired by one's own labor and industry.—*Cowell*.

QUESTUS EST NOBIS.—A writ of nuisance, which, by 15 Edw. I., lay against him to whom a house or other thing that caused a nuisance, descended or was alienated; whereas, before that statute the action lay only against him who first levied or caused the nuisance to the damage of his neighbor.—*Cowell*.

Qui abjurat regnum amittit regnum sed non regem; patriam sed non patrem patriæ (7 Co. 9): He who abjures the realm leaves the realm, but not the king; the country, but not the father of the country.

Qui adimit medium, dirimit finem (Co. Litt. 161): He who takes away the middle destroys the end.

Qui aliquid statuerit parte inaudita altera, æquum licet dixerit, haud æquum fecerit (6 Co. 52): He who decides

anything, one party being unheard, though he should decide right, does wrong.

Qui alterius jure utitur eodem jure uti debet (Poth. Tr. de Change, pt 1, ch. 4, art. 5, § 114; Broom Max. (5 edit.) 473): He who is clothed with the right of another ought to be clothed with the very same right.

Qui approbat non reprobatur: He who approves does not reprobate, *i. e.* he cannot both accept and reject the same thing.

Qui bene distinguit, bene docet (2 Inst. 470): He who distinguishes well, teaches well.

Qui bene interrogat, bene docet (3 Bulst. 227): He who questions well, teaches well.

Qui concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit (11 Co. 52): He who concedes anything is considered as conceding that without which his concession would be void, without which the thing itself could not exist.

Qui contemnit præceptum, contemnit præcipientem (12 Co. 96): He who contemns the precept, contemns the person giving it.

Qui cum alio contrahit, vel est, vel esse debet, non ignarus conditionis ejus: He who contracts with another, either is, or ought to be, acquainted with the condition of the person with whom he contracts.

It has well been observed by an eminent judge (Lord Stowell), that "with respect to any ignorance arising from foreign birth and education, it is an indispensable rule of law, as exercised in all civilized countries, that a man who contracts in a country engages for a competent knowledge of the law of contracts of that country. If he rashly presume to contract without such knowledge, he must take the inconveniences resulting from such ignorance upon himself, and not attempt to throw them upon the other party who has engaged under a proper knowledge and sense of the obligation which the law would impose upon him by virtue of that engagement." (*Dalrymple v. Dalrymple*, 2 Hagg. Cons. 61; *Story Conf. L.* § 76.)—*Wharton*.

Qui destruit medium, destruit finem (10 Co. 51 b): He who destroys the mean, destroys the end.

Qui doit inheriter al pere doit inheriter al fitz: He who would have been heir to the father, shall be heir to the son.

Qui ex damnato coitu nascuntur inter liberos non computentur (Co. Litt. 8 a): Those who are born of an unlawful intercourse are not reckoned among the children.

Qui facit per alium facit per se: He who acts through another acts through himself.

A contract made by an agent is looked upon in law as the contract of the principal, so agents need not be *sui juris*, and infants, married women and others are competent to act as such. In *Scott v. Shepherd*, 2 Black 892, an action was held to lie against the person who originally threw a squib which, after being knocked about by other persons in self-defense, ultimately hit and put out the plaintiff's eye. See AGENT, § 2; MASTER AND SERVANT, § 3; RESPONDEAT SUPERIOR.

Qui habet jurisdictionem absolventi, habet jurisdictionem ligandi (12 Co. 59): He who has the jurisdiction of loosening, has the jurisdiction of binding.

Qui hæret in litera, hæret in cortice (Co. Litt. 289): He who considers merely the letter of an instrument goes but skin-deep into its meaning.

This is a maxim of construction, and, literally interpreted, means that he who sticks at the letter sticks in the bark, *scil.* and does not penetrate to the real content or heart of the document, *i. e.* to its real signification.

QUI IMPROVIDE.—A supersedeas granted where a writ was erroneously sued out or misawarded. See Dyer 83, *n.* (18).

Qui in jus dominiumve alteri succedit jure ejus uti debet (D. 50, 17, 177, *pr.*): He who succeeds to the right or property of another, ought to be clothed with his right. "For instance," says Broom's Leg. Max. (5 edit.) 473, "fee-simple estates are subject, in the hands of the heir or devisee, to debts of all kinds contracted by the deceased."

Qui in utero est pro jam nato habetur, quoties de ejus commodo quaeritur: He who is in the womb is held as already born, whenever a question arises for his benefit.

Qui jure suo utitur, nemini facit injuriam (Reg. Jur. Civ.): He who exercises a right, does an injustice to nobody.

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est (10 Co. 78): Where a person does an act by command of one exercising judicial authority, the law will not suppose that he acted from any wrongful or improper motive, because it was his bounden duty to obey.

Qui non cadunt in constantem virum vani timores sunt aestimandi (7 Co. 27): Those fears are to be esteemed vain which do not affect a firm man.

Qui non habet, ille non dat: He who has not, gives not.

A person cannot convey a right that is not in him. See NEMO DARE POTEST, &c.

Qui non habet in ære, luat in corpore; ne quid peccetur impune (2 Inst.

173): He who cannot pay with his purse must suffer in person, lest any one should sin with impunity.

Qui non habet potestatem alienandi habet necessitatem retinendi (Hob. 336): He who has not the power of alienating, is obliged to retain.

Qui non improbat, approbat (3 Inst. 27): He who does not blame, approves.

Qui non negat fatetur: He who does not deny, admits. A well-known rule of pleading.

Qui non obstat quod obstare potest, facere videtur (2 Inst. 146): He who does not prevent what he can prevent, seems to commit the thing.

Qui non prohibet id quod prohibere potest assentire videtur (2 Inst. 308): He who does not forbid what he is able to prevent, appears to assent.

So one who enables another to commit a fraud is answerable. And a man who has a title to property offered for sale at an auction, and, knowing his title, stands by and encourages the sale, or does not forbid it, will be bound by the sale, for "*Qui non obstat quod obstare potest, facere videtur,*" and "*Fraus est celare fraudem*" (It is a fraud to conceal fraud). See Snell Eq. (5 edit.) 478.

Qui non propulsat injuriam quando potest, infert (Jenk. Cent. 271): He who does not repel an injury when he can, induces it.

Qui obstruit aditum, destruit commodum (Co. Litt. 161): He who obstructs an entry (on land) takes away the enjoyment.

Qui omne dicit, nihil excludit (4 Inst. 81): He who says all, excludes nothing.

Qui parcit nocentibus, innocentes punit (Jenk. Cent. 133): He who spares the guilty punishes the innocent.

Qui peccat ebrius, luat sobrius (Cary 133): Let him who sins when drunk, be punished when sober.

An intoxicated person can derive no privilege from a madness thus voluntarily contracted. On an indictment for murder, however, intoxication may be taken into consideration, to show that the act was not premeditated, and if there has been some contrivance or management to draw the party into drink, or any unfair advantage taken of his intoxication, the court will sometimes relieve. See Snell Eq. (5 edit.) 460.

Qui per alium facit, per seipsum facere videtur (Co. Litt. 258): He who does a thing by an agent, is considered as doing it himself.

Qui per fraudem agit, frustra agit (2 Rolle 17): What a man does fraudulently, he does in vain.

Qui periculum amat in eo peribit: He who loves danger will perish by it.

Qui potest et debet vetare, jubet (Gild. 35): He who is able and ought to forbid, commands.

Qui primum peccat ille facit rixam (Godb.): He who sins first, makes the strife.

Qui prior est tempore potior est jure (Co. Litt. 14a): He who is first in point of time is preferred in law.

(See *Brace v. Duchess of Marlborough*, 2 P. Wms. 49, 1, and *Marsh v. Lee*, 1 White & T. Lead. Cas. 659.) A mortgagee may recover in ejectment without giving notice to quit against a tenant who claims under a lease from the mortgagor, granted after the mortgage without the privity of the mortgagee. The rule stated in this maxim applies as between finders of "treasure trove," derelicts, and such like. (See, also, *Keech v. Hall*, 1 Sm. Lead. Cas. 574.) Where several persons have interests in one property, and equal equities in every point except time, as in the case of a third mortgagee who had no notice of a second mortgage when making his advance, here both mortgagees have equal equities, but the second mortgagee being first in point of time, has the prior right—in this instance, however, the third mortgagee could avail himself of the advantages of tacking.

Qui pro me aliquid facit, mihi fecisse videtur (2 Inst. 501): He who does anything for me, appears to do it to me.

Qui providet sibi providet hæredibus: He who provides for himself, provides for his heirs.

Qui rationem in omnibus quæerunt, rationem subvertunt (2 Co. 75): They who seek a reason for everything, subvert reason.

Qui semel actionem renunciaverit amplius repetere non potest (8 Co. 59): He who renounces an action once, cannot any more repeat it.

Qui semel est malus, semper præsumitur esse malus in eodem genere (Cro. Car. 317): He who is once criminal, is presumed to be always criminal in the same way.

Qui sentit commodum sentire debet et onus (1 Co. 99): He who receives the advantage ought also to suffer the burden.

Equity always acted on this principle when enforcing contribution between co-sureties. *Derling v. Earl of Winchelsea*, 1 White & T. Lead. Cas. 106, and *Waugh v. Carver*, 1 Sm. Lead. Cas. 908.

Qui sentit onus, sentire debet et commodum (1 Co. 99a): He who bears the burden of a thing, ought also to experience the advantage arising from it.

Qui tacet, consentire videtur (Jenk. Cent. 32): He who is silent, appears to consent.

Qui tacet consentire videtur, ubi tractatur de ejus commodo (9 Mod. 38): He who is silent is considered as assenting, when his advantage is debated.

QUI TAM.—See ACTION, § 9.

QUI TAM ACTION, (what must be). *Coxe* (N. J.) 44, 52.

— (demand in, must show who are entitled to the penalty). *Penn.* (N. J.) 168.

— (should be in the name of the governor). 36 Ga. 51.

Qui tardius solvit, minus solvit (Jenk. Cent. 58): He who pays slowly, pays too little.

Qui timent, cavent et vitant (Office of Exec. 62): They who fear are wary and avoid.

Qui totum dicit nihil excipit: He who says all excepts nothing.

Qui vult decipi decipiatur (Broom Max. (5 edit.) 782n.): Let him be deceived who wishes to be deceived.

QUIA EMPTORES.—The name usually given to the Stat. 18 Edw. I., passed in the third "notable" parliament holden at Westminster, and therefore also called the "Statute of Westminster III." After reciting that purchasers of lands ("*quia emptores terrarum*") from freeholders of great men and other lords hold their lands of the freeholders and not of the superior lords, whereby the latter lose the feudal fruits of tenure; it enacts that every free-man shall be at liberty to sell his lands, but that the purchaser shall hold them of the chief lord, so as to take the place of the vendor. The statute, therefore, abolished subinfeudation (*q. v.*), and thus made the future creation of seignories, manors, honors, &c., impossible. In the opinion of many writers it also first authorized conveyances of feudal lands, which had hitherto been considered inoperative as against the lord. 2 Bl. Com. 91; 2 Inst. 500; Wms. Seis. 22.

QUIA TIMET.—See BILL OF COMPLAINT, § 5; BILL QUIA TIMET.

QUICK WITH CHILD.—See ABORTION.

Quicquid acquiritur servo, acquiritur domino: Whatever is acquired by the servant (or agent) is acquired for the master (or principal). See STORY Ag. § 403.

Quicquid demonstratæ rei additur satis demonstratæ frustra est (D. 33, 4, 1, § 8): Whatever is added to demonstrate anything already sufficiently demonstrated, is surplusage.

Quicquid est contra normam recti, est injuria (3 Bulst. 313): Whatever is against the rule of right, is a wrong.

Quicquid in excessu actum est, lege prohibetur (2 Inst. 107): Whatever is done in excess is prohibited by law.

Quicquid iudicis auctoritati subijcitur, novitati non subijcitur (4 Inst. 66): Whatever is subjected to the authority of a judge is not subjected to novelty.

Quicquid plantatur solo, solo cedit (Office of Exec. 57): Whatever is affixed to the soil, belongs to the soil.

The principle of this rule is stringently adhered to as between the heir-at-law, and executor of a deceased person, and as between mortgagors and mortgagees; but it has been very considerably relaxed in its application to fixtures as between landlord and tenant. See **FIXTURES**.

Quicquid solvitur, solvitur secundum modum solventis, quicquid recipitur, recipitur secundum modum recipientis (2 Vern. 606): Whatever money is paid, is paid according to the direction of the payer, whatever money received, is received according to that of the recipient.

The debtor has the first right to appropriate payment to whatever debt, due to his creditor, he chooses at the time of making the payment. If the debtor omit to do so, the creditor has the next right of appropriation to what debt he chooses. If neither party makes appropriation the law makes it—generally to the earlier debt.

Quicumque habet jurisdictionem ordinariam est illius loci ordinarius (Co. Litt. 344): Whoever has an ordinary jurisdiction is ordinary of that place.

Quicumque jussu iudicis aliquid fecerit non videtur dolo malo fecisse, quia parere necesse est (10 Co. 71): Whoever does anything by the command of a judge, is not reckoned to have done it with an evil intent, because it is necessary to obey.

QUID JURIS CLAMAT.—A real action by which the grantee of a reversion or remainder expectant on an estate for life could compel the tenant for life to attorn to him. (Shep. Touch. 254.) It was abolished by Stat. 3 and 4 Will. IV. c. 27, § 36. See **ATTORNMENT**.

QUID PRO QUO.—Something for something. The old term for consideration (*q. v.*) "In every contract there must be *quid pro quo*." Co. Litt. 47b. See **POLL. CONT.** 151.

QUIET ENJOYMENT.—See **COVENANT**, § 8; **LEASE**, § 8.

QUIET ENJOYMENT, (what is a covenant for). 6 Mass. 246; 4 Wheel. Am. C. L. 10; 1 H. Bl. 34; 1 Brod. & B. 319; 1 Cro. 823; 2 *Id.* 513; Cro. Jac. 333, 425; 1 Ld. Raym. 106; 1 Môd. 101; 8 *Id.* 319; 10 *Id.* 334; 2 Saund. 181b; 4 Taunt. 329; 1 T. R. 671; 6 *Id.* 453; 8 *Id.* 279; 9 Ves. 330; 3 Com. Dig. 274; 7 *Id.* 745; Com. L. & T. 179; Shep. Touch. 390.

— (covenant for, runs with the land). 7 Halst. (N. J.) 264.

— (what is a breach of covenant for). 17 Mass. 586; 4 Halst. (N. J.) 139; 7 Johns. (N. Y.) 376, 380; 13 *Id.* 236; 2 Wend. (N. Y.) 565.

— (what is not a breach of covenant for). 15 Johns. (N. Y.) 483.

— (when an action will lie upon a covenant for). 3 Johns. (N. Y.) 471; 7 Wend. (N. Y.) 281.

— (when an action will not lie upon a covenant for). 14 Wend. (N. Y.) 671.

— (what damages are recoverable in an action on a covenant for). 11 Pick. (Mass.) 421; 2 Harr. (N. J.) 309; 2 Hill (N. Y.) 105; 4 Johns. (N. Y.) 1.

— (covenant of, in a deed extends only to the possession and not to the title). 5 Johns. (N. Y.) 120.

QUIET IN HARNESS, (in a warranty of a horse). 2 Car. & P. 540.

QUIET POSSESSION, (covenant for). Doug. 43, 45.

QUIETARE.—To quit, acquit, discharge or save harmless.

QUIETE CLAMARE.—To quit claim, or renounce all pretensions of right and title. Bract. 1, 5.

QUIETLY ENTER, HOLD AND ENJOY, (in a release). 11 East 633.

QUIETUS.—

§ 1. **In English law.**—A discharge granted by the crown or its officer to a person indebted to the crown, *e. g.* an accountant. It is a defense to a writ of extent, and may be entered on the register of judgments in discharge of an execution already issued. (Blount *s. v.*) It seems to have been originally a writ addressed to the barons of the Exchequer, directing that the debtor should be discharged (*quietus sit*) of all claims. 2 Mad. Exch. 220 *et seq.*; R. v. Wilkinson, Bunb. 315; Stat. 2 and 3 Vict. c. 11.

§ 2. **In American law.**—The discharge of an executor by a court of probate. 4 Mas. (U. S.) 131.

QUIETUS ESSE A QUERELA.—See **QUERELA**.

QUIETUS REDITUS.—A quit-rent.

Quilibet potest renunciare juri pro se introducto (2 Inst. 183): Every man can renounce a right introduced for himself.

QUILLET.—A quibble.

QUINQUEPARTITE.—Consisting of five parts.

QUINQUE PORTUS.—See CINQUE PORTS.

QUINSTEME, or QUINZIME.—Fifteenth; also the fifteenth day after a festival. 13 Edw. I. See *Cowell*.

QUINTAL, or KINTAL.—A weight of one hundred pounds.—*Cowell*.

QUINTO EXACTUS.—The fifth or last call or requisition of a defendant sued to out-lawry. See *Cowell*, voc. "*Quint-exact*."

Quisquis erit qui vult juris-consultus haberi continuet studium, velit a quocunque doceri (Jenk. Cent.): Whoever wishes to be a juris-consult, let him continually study, and desire to be taught by every one.

Quisquis præsumitur bonus; et semper in dubiis pro reo respondendum (Jur. Civ.): Every one is presumed good; and in doubtful cases the resolution should be ever for the accused.

QUIT, (in a deed). 2 N. H. 402.

QUIT-CLAIM "is a release or acquitting of a man for any action that he [the releasor] hath or might have against him." (*Termes de la Ley* s. v.) "*Fleta calleth it charta de quietâ clamantiâ*." (Co. Litt. 264 b.) The expression "quit-claim" is used in old-fashioned releases as an operative word equivalent to "release."

QUIT-CLAIM, (covenants may be assigned by). 21 Wend. (N. Y.) 120.

QUIT-CLAIM DEED.—A deed conveying only such title or interest as the grantor may have, without covenants of title, or any engagement to protect the grantee against paramount or adverse claims.

QUIT-CLAIM, GRANT, SELL AND, (in a deed). 3 Me. 441.

QUIT RENT.—Certain established rents of the freeholders of manors are denominated "quit rents," *quieti redditus*, because thereby the tenant goes quit and free of all other services (3 Cruise Dig. 314). Further, in respect even of ordinary freehold lands, a quit rent is payable to the crown as lord, but it is too insignificant in amount to be demanded.—*Brown*. See *RENT*.

QUIT UNTO HIM ALL MY RIGHT, (in a deed). 4 Wheel. Am. C. L. 251.

QUITTANCE.—An abbreviation of acquittance, a release (*q v.*)

QUO ANIMO.—With what mind or intention. See *ANIMUS*.

QUO JURE—A writ which lay for him who had land wherein another challenged common of pasture, time out of mind; and it was to compel him to show by what title he challenged it.—*F. N. B.* 158.

Quo ligatur, eo dissolvitur (2 Rolle 21): By the same mode by which a thing is bound, by that is it released.

QUO MINUS.—A writ which lay for him who had a grant of house-bote and hay-bote in another's woods against the grantor, making such waste as that the grantee could not enjoy his grant.—*O. N. B.* 148.

It also lay for the queen's accountant in the Exchequer against any person against whom he had a right of action, and was called a *quo minus* because in it the plaintiff suggested that he was the king's farmer or debtor, and that the defendant had done him the injury or damage complained of, *quo minus sufficiens erit* (by which he is less able) to pay the king his debt or rent. Afterwards this suggestion of being debtor to the king was allowed to be inserted by any plaintiff who wished to proceed in that court against any defendant, as a mere matter of form, and in this way the Court of Exchequer obtained a jurisdiction co-extensive with that of the Common Pleas in actions personal. The writ of *quo minus* was abolished by 2 Will. IV. c. 39. 3 Bl. Com. 46.

Quo modo quid constituitur, eodem modo dissolvitur (Jenk. Cent. 74): In the same manner by which anything is constituted, by that it is dissolved.

QUO WARRANTO.—

§ 1. **Writ.**—The writ of *quo warranto* is a high prerogative writ by the sovereign against one who claims or usurps any office, franchise or liberty, to inquire "by what authority" he supports his claim. It lies also in case of non-user, or mis-user, of a franchise, or where any public trust is executed without authority, though it may be no usurpation on a franchise of the sovereign. 3 Bl. Com. 262; 3 Steph. Com. 638; Chit. Prerog. 836.

§ 2. **Information.**—The prerogative writ of *quo warranto*, however, has long fallen into disuse, having been supplanted by what is called an "information in the nature of a writ of *quo warranto*," wherein the process is speedier, and the judgment not so inconveniently decisive, as on the ancient writ. It is now the usual remedy in the case of corporation disputes between

private persons, without the intervention of the prerogative, by virtue of the Stat. 9 Ann. c. 20, which permits an information in the nature of a *quo warranto* to be brought with leave of the court, at the relation of any person desiring to prosecute the same (who is then styled the "relator") against any person usurping, intruding into, or unlawfully holding any franchise or office in any city, borough or town corporate. *Ib.*; Stat. 32 Geo. III. c. 58; 7 Will. IV. and 1 Vict. c. 78; 6 and 7 Vict. c. 89. See *Ex parte Richards*, 3 Q. B. D. 368. See, also, OUSTER.

QUO WARRANTO, (writ of, defined). 23 Wend. (N. Y.) 577.

— (at common law was a criminal proceeding). 2 Johns. (N. Y.) Ch. 371.

— (when will not lie). 2 Halst. (N. J.) 101.

QUOAD HOC.—As to this. A prohibition *quoad hoc* is a prohibition as to certain things among others. Thus, where a party was complained against in the Ecclesiastical Court for matters cognizable in the temporal courts, a prohibition *quoad* these matters issued, *i. e.* as to such matters the party was prohibited prosecuting his suit in the Ecclesiastical Court. The word is also frequently applied to other matters than to prohibitions. 2 Rol. Abr. 315, b. 10; Vin. Abr. tit. "Prohib." E. a. 7.

Quod a quoque pœnæ nomine exactum est id eidem restituere nemo cogitur (D. 50, 17, 46): No one is obliged to pay back what any one has been made to pay by way of penalty.

Quod ab initio non valet, in tractu temporis non convalescet (4 Co. 2): That which is bad in its commencement, improves not by lapse of time.

Quod ædificatur in area legata cedit legato (Amos & F. Firt. (2 edit.) 246): That which is built on the ground devised passes to the devisee.

Quod alias bonum et justum est, si per vim, vel fraudem petatur, malum et injustum efficitur (3 Co. 78): What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust.

Quod alias non fuit licitum, necessitas licitum facit: What otherwise was not lawful, necessity makes lawful.

Quod approbo non reprobo (Broom Max. (5 edit.) 712): That which I approve I do not reject. In other words, if one take a benefit under a deed or will, he must perform any condition attached to it.

QUOD BILLA CASSETUR.—That the bill be quashed. The common law form of

a judgment sustaining a plea in abatement, where the proceeding is by bill, *i. e.* by a *capias* instead of by original writ.

QUOD CLERICI BENEFICIATI DE CANCELLARIA.—A writ to exempt a clerk of the chancery from the contribution towards the proctors of the clergy in parliament, &c.—*Reg. Orig.* 261.

QUOD CLERICI NON ELIGANTUR IN OFFICIO BALLIVI, &c.—A writ which lay for a clerk, who, by reason of some land he had, was made, or was about to be made, bailiff, headle, reeve, or some such officer, to obtain exemption from serving the office.—*Reg. Orig.* 187.

QUOD COMPUTET.—An interlocutory judgment or decree in a matter of account.

Quod constat clare, non debet verificari: That which is clearly apparent needs not to be verified.

Quod constat curiæ, opere testium non indiget (2 Inst. 662): What is manifest to the court needs not the help of witnesses.

Quod contra legem fit, pro infecto habetur (4 Co. 31): What is done contrary to law is considered as not done.

Quod contra rationem juris receptum est, non est producendum ad consequentias (D. 1, 3, 14): That which has been received against the reason of the law is not to be drawn into a precedent.

QUOD CUM.—That whereas. Emphatic words used in old Latin declarations, where the charge was made by way of recital, and literally translated in the modern forms, "that whereas."

Quod datum est ecclesiæ, datum est Deo (2 Inst. 2): What is given to the church is given to God.

Quod demonstrandi causa additur rei satis demonstratæ, frustra fit (10 Co. 113): What is added to a thing sufficiently palpable, for the purpose of demonstration, is vain.

Quod dubitas ne feceris (Hale P. C. 300): Refrain from doing that about which you are in doubt.

QUOD EI DEFORCEAT.—A writ or action which lay for the recovery of land where a tenant for life, in tail, or the like, had lost the right of possession through his default or non-appearance in a possessory action. (Co. Litt. 331 b, 354 b; 3 Bl. Com. 193.) It was abolished by Stat. 3 and 4 Will. IV. c. 27, § 86.

Quod est ex necessitate nunquam introducitur, nisi quando necessarium (2 Rolle 502): That which is of necessity is never introduced, unless when necessary.

Quod est inconveniens aut contra rationem, non permissum est in lege (Co. Litt. 178a): That which is inconvenient, or against reason, is not permissible in law.

Quod est necessarium est licitum (Jenk. Cent. 76): That which is necessary is lawul.

Quod fieri debet facile præsuntur (Hakerst. 153): That which ought to be done is easily presumed.

Quod fieri non debet factum valet (5 Co. 38): What ought not to be done is valid when done, e. g. an infant ward of court ought not to marry or to be married without the sanction of the court; but if he or she being of the marriageable age should marry without such consent, then the marriage holds good.

Quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori (Co. Litt. 260a): That which is valid in the less, shall be valid in the greater; and that which is not valid in the greater, shall neither be valid in the less.

Quod in uno similium valet, valebit in altero (Co. Litt. 191): What avails in one of two similar things, will avail in the other.

Quod inconulto fecimus, consultius revocemus (Jenk. Cent. 116): What we have done without due consideration, upon better consideration we should revoke.

Quod initio vitiosum est non potest tractu temporis convalescere (D. 50, 17, 29): That which is void from the beginning cannot become valid by lapse of time.

Quod ipsis qui contraxerunt obstat, et successoribus eorum obstat (D. 50, 17, 143): That which bars those who have made a contract, will also bar their successors.

Quod jussu alterius solvitur pro eo est quasi ipsi solutum esset (D. 50, 17, 180): That which is paid by the order of another, is the same as though it were paid to himself.

Quod meum est sine facto meo vel defectu meo amitti vel in alium transferri non potest (Broom Max. (5 edit.) 465): That which is mine cannot be lost or transferred to another without my alienation or forfeiture.

Quod naturalis ratio inter omnes homines constituit, vocatur jus gentium (1 Bl. Com. 43): That which natural reason has established among all men, is called the law of nations.

Quod necessarie intelligitur non deest (1 Buls. 71): That which is necessarily understood is not wanting.

Quod necessitas cogit, defendit (Hale P. C. 54): That which necessity compels, it defends.

Quod non apparet non est; et non apparet judicialiter ante judicium (2 Inst. 479): That which appears not, is not; and nothing appears judicially before judgment.

Quod non habet principium non habet finem (Wing. Max. 79; Co. Litt. 345a): That which has not beginning has not end.

Quod non valet in principali, in accessorio seu consequenti, non valebit; et quod non valet in magis propinquo, non valebit in magis remoto (8 Co. 78): That which is not good against the principal, will not be good as to accessories or consequences; and that which is not of force in regard to things near it, will not be of force in regard to things remote from it.

Quod nullius est, est domini regis (Fleta 1, iii.): That which is the property of nobody belongs to our lord the king.

Quod nullius est, id ratione naturali occupanti conceditur (Pand. 1, xli.): What belongs to nobody is given to the occupant by natural right.

Quod omnes tangit, ab omnibus debet supportari: That which touches all concerns all, ought to be supported by all.

Quod per me non possum, nec per alium (4 Co. 24): What I cannot do of my self, I cannot do by another.

Quod per recordum probatum, non debet esse negatum: What is proved by record, ought not to be denied.

QUOD PERMITTAT.—A writ which lay against any person who erected a building though on his own ground, so near to the house of another, that it hung over or became a nuisance to it.—*Termes de la Ley* 479. Abolished. 3 Steph. Com. (7 edit.) 413 n.

QUOD PERMITTAT PROSTER-NERE.—A writ, in the nature of a writ of right, to abate a nuisance.—*F. N. B.* 104. Abolished.

QUOD PERSONA NEO PREBENDARII, &c.—A writ which lay for spiritual persons, distrained in their spiritual possessions, for payment of a fifteenth with the rest of the parish.—*F. N. B.* 175. Obsolete.

Quod populus postremum jussit, id jus ratum esto (1 Bl. Com. 89): What the people have last enacted, let that be the established law.

Quod primum est intentione, ultimum est in operatione (Bacon): That which is first in intention is last in operation.

Quod principi placuit, legis habet vigorem (D. 1, 4, 1): That which has pleased the prince, has the force of law.

Quod prius est verius est; et quod prius est tempore potius est jure (Co. Litt. 347): What is first is true; and what is first in time is better in law.

Quod pro minore licitum est, et pro majore licitum est (8 Co. 43): That which is lawful as to the minor is lawful as to the major.

Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire (D. 50, 17, 203): The damage which one experiences from his own fault is not considered as his damage.

Quod quis sciens indebitum dedit hac mente, ut postea repeteret, repetere non potest (D. 12, 6, 50): That which one has given, knowing it not to be due, with the intention of redemanding it, he cannot recover back.

QUOD RECUPERET.—That he do recover the debt or damages. A final judgment for a plaintiff in a personal action.

Quod remedio destituitur ipsa re valet si culpa absit (Bac. Max. Reg. 9): That which is without remedy avails of itself, if there be no fault in the party seeking to enforce it.

Quod semel aut bis existit præterunt legislatores (D. 1, 3, 6): The legislature takes no notice of that which is only of occasional occurrence.

Quod semel meum est amplius meum esse non potest (Co. Litt. 49b): What is once mine cannot be more fully mine.

Quod semel placuit in electione, amplius displicere non potest (Co. Litt. 146): What choice is once made, it cannot be disapproved any longer.

When a person is called upon to elect between two things (whether properties or rights of action), and he elects or makes his choice between them with full knowledge of all the circumstances of the case, it is no longer open to him to alter his choice. See **ELECTION**, § 2.

Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem seu compensationem (Bacon): What is given or reserved under a certain form, is not to be drawn into a valuation or compensation.

Quod subintelligitur non deest (2 Ld. Raym. 832): What is understood is not wanting.

Quod tacite intelligitur deesse non videtur (4 Co. 22): What is silently understood does not appear to be wanting.

Quod vanum et inutile est, lex non requirit (Co. Litt. 319): The law requires not what is vain and useless.

Quodcunque aliquis ob tutelam corporis sui fecerit, jure id fecisse videtur (2 Inst. 590): Whatever any one does in defense of his person, that he is considered to have done legally.

Quodque dissolvitur eodem modo quo ligatur (2 Rolle 39): In the same manner that a thing is bound, in the same manner it is unbound.

QUONIAM ATTACHIAMENTA.—One of the oldest books of the Scotch law, so called from the first words of the volume. See **Erskine L. 1, tit. 1, § 36.**

QUORUM.—

§ 1. When a committee, board of directors, meeting of shareholders, legislative or other body of persons, cannot act unless a certain number at least of them are present, that number is called a "quorum." Thus, a first meeting of creditors in bankruptcy cannot act for any purpose, except the election of a chairman, the proving of debts and the adjournment of the meeting, unless a quorum of three creditors are present.

§ 2. The expression is taken from the form of commission by which justices of the peace are appointed, and which mentions some particular justices of whom one must always be present for the transaction of certain kinds of business (*quorum aliquem vestrum A., B., C., D., &c., unum esse volumus*), whence the persons so named are or were called "justices of the quorum." At the present day the quorum clause is of no importance, all the justices being usually named in it. 1 Bl. Com. 351.

QUORUM, (in township act of 1853). 20 Ohio St. 283.

QUORUM OF THE COURT, (majority of, may decide a cause). 6 Wend. (N. Y.) 325.

Quorum prætextu, nec auget nec minuit sententiam, sed tantum confirmat præmissa (Plowd. 52): "Quorum prætextu" neither increases nor diminishes a sentence, but only confirms that which went before.

QUOT.—One-twentieth part of the movable estate of a person dying in Scotland, anciently due to the bishop of the diocese wherein he had resided.

QUOTA.—A tax to be levied in an equal manner.—*Cowell*. That part of a debt or demand, e. g. a call for troops,

which any person, class of persons, or portion of the community must bear.

QUOTA OF ANY CITY OR TOWN, (in Stat. 1865, c. 230, § 1). 97 Mass. 390.

QUOTATION.—The citation of some law or decided case, or passage thereof, in support of a position which it is desired to establish. See CITATION, § 4.

Quoties dubia interpretatio libertatis est secundum libertatem respondendum est (D. 50, 17, 20): As often as the interpretation of liberty is doubtful, we should answer according to liberty.

Quoties duplici jure defertur alicui successio, repudiato novo jure, quod ante defertur supererit vetus (Reg. Jur. Civ.): Whenever a succession comes to a man by a double right, the new right being laid aside, the old one which brought it first will survive.

Quoties idem sermo duas sententias exprimit, ea potissimum excipiat, quæ rei generandæ optior est (D. 50, 17, 67): Whenever the same speech expresses two meanings, that ought to be given most weight to which is the fitter for effecting the purpose.

Quoties in stipulationibus ambigua oratio est commodissimum est id accipi quo res de qua agitur in tuto sit (D. 41, 1, 80; D. 50, 16, 219): Whenever the expression is doubtful in contracts, it is most

advantageous that that meaning be accepted by which the safety of the subject-matter may be assured.

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est (Co. Litt. 147): When in the words there is no ambiguity, then no exposition contrary to the words is to be made.

It is a rule that parol evidence contrary to the writing itself is excluded, and the instrument itself allowed to be the only criterion of the intention of the parties.

QUOUSQUE.—See PROHIBITION, § 2; SEIZURE.

Quum ne lucro quorum quæeratur, melior est causa possidentis (D. 50, 17, 126): When the question is as to the gain of two persons, the title of the party in possession is the better one.

Quum quo inter se pugnancia repertiuntur in testamento, ultimum ratum est: When two things repugnant to each other are found in a will, the last shall stand.

Quum principalis causa non consistit ne ea quidem quæ sequuntur locum habent (D. 50, 17, 129, s. Ir.): When the principal does not hold, the incidents thereof ought not to obtain.

Quum quod ago non valet ut ago, valeat quantum valere potest (1 Vent. 216): When what I do is of no force as to the purpose for which I do it, let it be of force to as great a degree as it can.

R.

RACE-FIELD, (what is a). 9 Leigh (Va.) 648.

RACE, FOOT, (what is). 2 Wils. 38.

RACEWAY, (in a dead). 8 Mo. App. 90.

RACHAT.—In the French law, the right of repurchase which, in English and American law, the vendor may reserve to himself. It is also called "*réméré*."—*Brown*.

RACHETUM.—A compensation or redemption of a thief.—*Cowell*.

RACK.—An engine of torture.

It was occasionally used, in England, for the purposes of state; but in judicial proceedings only once in the reign of Queen Elizabeth; its last infliction is said to have been in 1640. When, upon the assassination of Villiers, Duke of Buckingham, by Felton, it was proposed in the Privy Council to put the assassin to the rack, to discover his accomplices, the judges declared, to the honor of the law, that no such proceeding was allowable. The uncertainty of this punishment as a test of truth, was pointed out by Cicero, though it was then usual to torture slaves

to extract evidence. "*Tamen*," says he, "*illa tormenta gubernat dolor, moderatur natura cujusque tum animi tum corporis, regit quæsitior flectit libido, corrumpit spes, infirmat metus; ut in tot rerum angustiis nihil veritati loci relinquatur*."—*Pro Sulla* 28.

The Marquis Beccaria (on Crimes, c. xvi.), with a force of raillery truly exquisite, if the subject were not so improper for merriment, proposes this problem: "The force of the muscles and the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime." (*Encycl. Lond.*; 4 Reeves Hist. Eng. Law 411; and 5 *Id.* 240; 1 Hall. Cons. Hist. c. iii. 148, 150; 2 *Id.* c. vii. 8; and 3 *Id.* c. xvii. 329.)—*Wharton*.

RACK-RENT.—A rent of the full annual value of the tenement, or near it. See RENT, § 4.

RACK-RENTER.—One who pays the uttermost rent.

RACK-VINTAGE.—Wines drawn from the lees.—*Cowell*.

RADICALS.—A political party. The term arose in England, in 1818, when the popular leaders, Hunt, Cartwright, and others, sought to obtain a radical reform in the representative system of parliament. Bolingbroke (*Disc. on Parties*, Let. 18) employs the term in its present accepted sense: "Such a remedy might have wrought a *radical* cure of the evil that threatens our constitution," &c.—*Wharton*.

RADOUB.—In the French law, the repairs made to a ship, and a fresh supply of furniture and victuals, munitions and other provisions required for a voyage.

RAFFLE OF WATCHES, (is not a lottery). 2 Mills (S. C.) 128.

RAGEMAN.—A rule, form, or precedent.

RAGLORIOUS.—A steward. *Seld. Tit. Hon.* 597.

RAIL FENCES, (will pass under the word "land"). 1 N. Y. 564.

RAGMAN'S-ROLL, or RAGIMUND'S-ROLL.—A roll, called from one Ragimund, or *Rugimont*, a legate in Scotland, who, summoning all the beneficed clergymen in that kingdom, caused them on oath to give in the true value of their benefices, according to which they were afterwards taxed by the Court of Rome.—*Wharton*.

RAILROAD, or RAILWAY.—A road specially laid out and graded, having parallel rails of iron or steel for the wheels of carriages or cars, drawn by steam or other motive power, to run upon. Railways are generally constructed under private acts, or general railway acts, which confer the power of compulsorily purchasing the lands required for the line. A railway act in England almost invariably incorporates the provisions of the Lands Clauses Consolidation Act and the Railways Clauses Acts, 1845 and 1863. Railways are further subject to numerous acts of parliament, the chief of which are the Railway Regulation Acts, 1840, 1842, 1863, 1871, 1873, and the Railway and Canal Traffic Act, 1854. The provisions of some of these acts are enforced by the board of trade, others by the railway commissioners. (*See Hodg. Railw. passim.*) The American statutes relative to railways are far too numerous for particular reference, each State having its own system of railway laws.

As to whether a railway company is a carrier, *see* COMMON CARRIER, and references there given.

RAILROAD, (is a highway). 1 Chit. Gen. Pr. 202.

— (is not a public highway). Phil. (N. C.) L. 140.

— (includes sidings). 58 Pa. St. 249.

— (in a statute). 24 Ill. 52; 10 Bush (Ky.) 231; 2 Duv. (Ky.) 175; 7 Allen (Mass.) 524.

— (does not include the rolling-stock of the company). 3 Otto (U. S.) 442.

RAILROAD STOCK, (when taxable as personal property). 4 Paige (N. Y.) 384.

RAILWAY COMMISSIONERS.—A body of three commissioners appointed under the English Regulation of Railways Act, 1873, principally to enforce the provisions of the Railway and Canal Traffic Act, 1854, by compelling railway and canal companies to give reasonable facilities for traffic, to abstain from giving unreasonable preference to any company or person, and to forward through traffic at through rates. They also have the supervision of working agreements between companies. (*Hodg. Railw.* 437 *et seq.* *See* Warwick Canal Co. v. Birmingham Canal Co., 5 Ex. D. 1; South Eastern Rail. Co. v. R. C., 5 Q. B. D. 217; 6 Id. 536; Great Western Rail. Co. v. R. C., 7 Id. 182.) The duration of their office has been extended to December 31st, 1882. Stat. 42 and 43 Vict. c. 56.

RAILWAY CORPORATION, (defined). 20 Kan. 515.

RAILWAY PASSENGERS.—*See* COMMON CARRIER; NEGLIGENCE; PASSENGERS, § 2.

RAILWAY SCRIP.—*See* SCRIP; SHARE; STOCK.

RAISED, (in a will). 59 Ind. 593.

RAISING A PROMISE.—When it is said that the law "raises a promise," or "raises an assumpsit," it is meant that the law implies a promise from the transaction in question.

RAISING A USE.—Creating, establishing, or calling into existence, a use. Thus, if a man conveyed land to another in fee, without any consideration, equity would presume that he meant it to be to the use of himself, and would, therefore, raise an implied use for his benefit. *See* USE.

RAISING MONEY.—To raise money is to realize money, by subscription, loan, or otherwise.

RAN.—Open or public theft.—*Cowell*.

RAN. (defined, as applied to a ship stranding).
3 Barn. & Ad. 20, 24.

RANGE.—In the United States public land laws, range is used as a guide in finding a given township; the townships of a certain row or tier, as they appear on the map, are said to lie in a range of a given number.

RANGER.—A sworn officer of the forests and parks. His office consisted chiefly in three points: to walk daily through his charge, and see, hear and inquire of trespasses in his bailiwick; to drive the beasts of the forest, both of venery and chase, out of the disafforested into the forested lands, and to present all trespasses of the forest at the next court holden for the forest.—*Manw.*

RANK.—

§ 1. **Officers.**—The relative positions in the service, of officers in the army and navy.

§ 2. **In English law.**—A claim to a prescriptive payment, such as a *modus*, is said to be rank when it is excessive, and therefore void. Thus, if a *modus* set up is so large that it exceeds what would have been, in the time of Richard I., the value of the tithes in lieu of which it is claimed, the *modus* is rank and destroys itself. 2 Steph. Com. 731.

RANKING OF CREDITORS.—In the Scotch law, the arrangement of the property of a debtor, according to the claims of the creditors and the nature of their respective securities.

RANSOM.—(1) A price of redemption of a captive or prisoner of war, or of captured property; (2) a price paid for the pardon of some great offense. It differs from amercement, because it excuses from corporal punishment.—*Cowell*.

RANSOM BILL.—Upon any capture of enemy's property on the high seas in time of war, the captor may accept a ransom for the same, the effect of which is that the property is thenceforth safe (until its destination) from any second capture by the same belligerent or his allies. In English law, ransoms are within the jurisdiction of the Court of Admiralty as a Prize Court, and are regulated by various statutes, the queen, in her Privy Council, allowing them or not to hold good according to the circumstances of the capture.

RANSOM OF A VESSEL. (bill of exchange given for). 2 Gall. (U. S.) 325.

RAPE.—

§ 1. In English civil law, a rape is a division of a county. See *LATHE*.

§ 2. In criminal law, rape is the act of having carnal knowledge of a woman against her will or without her conscious permission, or where her permission has been extorted by force or fear of immediate bodily harm. Rape is a felony, punishable, in England, with penal servitude for life; and in America, by death in some jurisdictions and long terms of imprisonment in others. See *PENETRATION*.

RAPE, (defined). 52 Ind. 187; 105 Mass. 376; 46 Miss. 509.

— (what constitutes). 11 Neb. 276.

— (what is not). 50 Barb. (N. Y.) 128.

— (requisites of indictment for). 42 Tex. 226.

RAPE OF THE FOREST.—Trespass committed in the forest by violence.—*Cowell*.

RAPE-REEVE.—An officer who used to act in subordination to the shire-reeve.

RAPINE.—The taking a thing against the owner's will, openly or by violence; robbery. See *LARCENY*.

RAPPORTS.—This is, in French law, the duty incumbent upon a legatee to bring into hotchpot such part of the legacy as he has already received by gift *inter vivos*. See *COLLATIO BONORUM*; *HOTCHPOT*; *REDUCTION*.

RAPTOR.—In old English law, a ravisher.

RAPTU HÆREDIS.—A writ for taking away an heir holding in socage; of which there were two sorts, one when the heir was married, the other when he was not.—*Reg. Orig.* 163.

RASCAL, (not an actionable word). 1 Chit. Gen. Pr. 44.

RASTELL.—Among the ancient law-writers of the reign of Henry VIII. are to be reckoned John Rastell, the printer and lawyer, and his son William Rastell, the lawyer and printer. The former was bred a printer, and though he did not take to the practice of the law, yet it evidently appears from his works that he had been a diligent student. The latter, though educated for the bar, and a practitioner, succeeded to his father's occupation, which he seems to have united with his profession, till the honors of the latter called upon him to decline it altogether. John Rastell translated from the French the "Abridgment of the Statutes prior to the time of Henry VII." He also abridged those of Henry VII. and down to the 23 and 24 Hen. VIII., which were printed together by the son William, in 1533. This was the first abridgment in the English language, and it is introduced by the author with a long preface, recommending the printing of law books in English, and ascribing

ing great praise to Henry VII. for first directing the statutes to be made in the mother-tongue. To this writer are ascribed two other books, "Les Termes de la Ley," and "The Tables to Fitzherbert's Abridgment." The title of authorship has, however, been disputed with respect to these two works, which have by some been given to the son, William. As to "Les Termes de la Ley," it was ascribed to John by Bale; but it is omitted by Pitts in his account of him, and peremptorily denied to be his by Wood, who as positively attributes it to William. That was Lord Coke's opinion; but Bishop Tanner again restores it to John. Perhaps it may be giving to each his distinct merit, if we suppose that John composed the original work in French, and that William made the translation, which was printed by him, and was never doubted to be his.

To William Rastell is ascribed a tract called "The Chartulary," printed in 1534; but there seems no pretence for this supposition, and the work is no more than the tract which had before been printed under the title of "Carta Feodi Simplicis." He made a table to Fitzherbert's "New Natura Brevium," and another of the "Pleas of the Crown." The tables to "Fitzherbert's Abridgment," which are ascribed by some to him, are the same probably that were before made by his father, and were reprinted by William. The performances, therefore, which must distinguish William Rastell, belong to a later period than the reign of Henry VIII. These are his collection of English statutes printed in 1559, and his "Entries," printed long after his death in 1596. (4 Reeves Hist. Eng. Law 418.)—*Wharton*.

RASURE, or ERASURE.—The act of scraping or shaving.

Rasure of a deed, so as to alter it in a material part, without consent of the party bound by it, &c., will make it void; and if it be raised in the date after delivery, it is said it goes through the whole. Where a deed by rasure, addition, or alteration becomes no deed, the defendant may plead *non est factum*. 5 Co. 23.

A rasure, or interlineation in a deed is presumed, in the absence of rebutting evidence, to have been made at or before its execution; but in a will it is presumed to have been made after its execution. See ALTERATION OF WRITTEN INSTRUMENTS; INTERLINEATION.

RATE—RATEABLE.—

§ 1. In English law.—A rate is a sum assessed or made payable by a body having local

jurisdiction over the district in which the person on whom the rate is assessed dwells or has property. (See TAXATION.) There are also rates, such as water rates, charged by ordinary water companies, which are modes of charging for the sale of commodities, and therefore do not fall within the ordinary definition of rates. Rates are almost always, if not invariably, assessed in respect of the enjoyment or occupation of real property (Cast. Rat. 120; Stat. 3 and 4 Vict. c. 39. As to the rating of plantations, mines and rights of sporting, see the Rating Act, 1874) in proportion to its value, (*pro rata*, whence the term "rate"); and when a person has such an occupation of property as to be liable to payment of rates, his occupation is said to be rateable. (See OCCUPATION, § 3.) The oldest rate appears to be that imposed for the relief of the poor, and the principles on which it is assessed and levied have been followed (with certain modifications) in the case of other rates. Those principles may be shortly stated as follows: It is only the beneficial occupation which is rateable, and therefore, in arriving at the value of it, repairs, insurance, and other necessary outgoings are allowed to be deducted.* For the same reason unoccupied houses (e. g. a house in the custody of a caretaker) and unfinished buildings are not rateable. On the other hand, the fact that the occupation of property is in effect unprofitable because the occupier has a heavy rent or other outgoings to bear, or because the income arising from the occupation is devoted to charitable or public purposes, does not affect his liability to be rated. Cast. Rat. 27, 44; Jones v. Mersey Docks, 11 H. L. 443.

§ 2. The principal kinds of rates are, (A full list will be found in the Report of the Select Committee on Local Taxation, 1870:—) (1) Borough rates, as to which see BOROUGH, § 3; there are also special rates levied in some boroughs, e. g. watch rates for defraying police expenses. (Mun. Corp. Act, 1835, § 92; 2 and 3 Vict. c. 28; 3 and 4 Vict. c. 28; 8 and 9 Vict. c. 110.) (2) County rates, assessed by the justices of the peace for the respective counties of England, to defray certain expenses authorized by various acts of parliament from 22 Hen. VIII.; the principal purposes for which the county rate is levied are the repair of bridges and the building and repairing of prisons. (Stats. 12 Geo. II. c. 29; 15 and 16 Vict. c. 81.) (3) County police rates. (Stats. 3 and 4 Vict. c. 38; 7 and 8 Vict. c. 33.) (4) County lunatic asylum rates. (Stat. 16 and 17 Vict. c. 97, § 46.) (5) Poor rates, as to which see GUARDIANS OF THE POOR; OVERSEERS; POOR LAWS. (6) Highway rates, for the repairing and widening of highways (q. v.) (7) Rates levied by sanitary authorities, of which the chief are—(a) the general district rate, leviable to defray the ordinary expenses of an urban authority in the ex-

* See Stat. 5 and 6 Will. IV. c. 96, which directs the rateable value of hereditaments rated for the relief of the poor to be calculated upon an estimate of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes and tithe commutation rent charge, if any, and deducting therefrom the probable average annual

cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent. (Cast. Rat. 357.) Special provisions as to rating the owners instead of the occupiers of property in certain cases, and as to rating unoccupied property, are contained in the Public Health Act, 1875, § 211.

cution of the Public Health Acts, which the district fund is insufficient to meet, (Public Health Act, 1875, § 207 *et seq.*;) (b) private improvement rates, levied on the occupiers of particular premises in respect of works executed by an urban authority for the benefit of such premises, (*Id.* § 213 *et seq.*; compare §§ 23, 150;); (c) highway rates, levied by an urban authority as surveyor of highways within their district, (*Id.* §§ 144, 216;); (d) water rates, levied by an urban or rural authority. (*Id.* § 56; Public Health (Water) Act, 1878.) (8) The vestries and district boards charged with the execution of the Metropolis Management Act, 1855, and the subsequent acts, are authorized to require the overseers of the poor of the respective parishes within the metropolis to levy rates for defraying their expenses, namely, a sewers rate, a lighting rate, and a general rate. (M. L. M. Act, 1855, § 158 *et seq.*; Act of 1862, § 5.) The Metropolitan Board of Works are authorized to levy a consolidated rate for defraying their expenses in the execution of the acts, and for paying interest on and redeeming the moneys borrowed by them. The rate is levied by precept on the vestries and local boards, who add the amount to their own expenses. (Met. B. of Works (Loans) Act, 1869.) (9) The expenses of the metropolitan police are defrayed partly out of a police rate, and partly out of grants by the treasury. (Stat. 10 Geo. IV. c. 44; Police Rate Act, 1868; Police (Expenses) Act, 1875.) (10) The Stat. 3 and 4 Will. IV. c. 90, authorizes the levying of rates for lighting and watching any parish in which the act is adopted; "watching" means the employment of police or constables. (11) There are also various rates levied under acts of local application, such as improvement rates, sewerage and drainage rates, levied by improvement commissioners and other bodies. Towns Improvement Clauses Act, 1847, § 156 *et seq.*; Stat. 23 and 24 Vict. c. 30. *See* TOWNS IMPROVEMENT.

§ 3. Rates are sometimes divided into (1) rates of primary districts, such as those levied in parishes; and (2) rates of aggregate districts, such as counties, boroughs, &c.; also into (3) rates which are levied and expended by the same authority, such as poor rates; and (4) rates levied by one authority and expended by another, such as the metropolitan rates mentioned above. The latter are sometimes called "precept rates." Report on Local Taxation 10 *et seq.*

RATE, (of interest). 11 Cal. 14.
— (in a statute). 4 Neb. 293.

RATE OF EXCHANGE.—The price at which a bill drawn in one country or State upon another may be sold in the former. The par of the currency of any two countries means, among merchants, the equivalency of a certain amount of the currency of the one in the currency of the other, supposing the currencies of both to be of the precise weight and purity fixed by their respective mints. Thus, accord-

ing and France, £1 is equal to 25 francs 20 centimes, which is consequently said to be the par between London and Paris.

RATE OF FARE, (in a statute). 26 N. Y. 523.
RATE OF SUCH ALLOWANCE, (in a statute). 1 Hopk. (N. Y.) 37.

RATE TITHE.—When any sheep or other cattle are kept in a parish for less time than a year, the owner must pay tithe for them *pro rata*, according to the custom of the place.—*F. N. B.* 51.

RATEABLE HEREDITAMENTS, (in taxing act). L. R. 7 Q. B. 90.

RATEABLE POLLS, (those of aliens may be). 7 Mass. 523.

RATEABLE VALUE, (equivalent to "appraised" or "assessed value"). 20 Conn. 295.
— (in a statute). L. R. 8 C. P. 258.

RATED OR ASSESSED, (in a statute). 3 C. P. D. 332.

RATES, (synonymous with "assessments"). 2 Serg. & R. (Pa.) 271.

— (in a statute, equivalent to "taxes"). 1 Serg. & R. (Pa.) 65.

RATES MADE, (in a statute). L. R. 4 C. P. 468.

✓ **RATIFICATION** is where a person adopts a contract or other transaction which is not binding on him, because it was entered into by an unauthorized agent (Leake Cont. 268), or the like. Thus, if A. enters into a contract on behalf of B., without having B.'s authority to do so, B. may either repudiate or adopt the contract; if he adopts it he is said to ratify it, and it then takes effect as if it had been originally made with his authority. (Bolton v. Hillersden, 1 Ld. Raym. 224.) It is sometimes a question whether a person's act amounts to a ratification, or is a fresh contract altogether. A fresh contract between the same parties always requires a consideration to support it, while in the case of a ratification there may or may not be a new consideration. Ditcham v. Worrall, 5 C. P. D. 410. As to ratification by infants, *see* INFANT.

§ 2. It follows from the nature of the thing that ratification, in the proper sense of the word, cannot take place where the party who professes to ratify a transaction was not in existence when it took place; as, where a person enters into a contract as promoter or trustee on behalf of a company which is to be subsequently formed, and the company, when formed, adopts it. This is making a new contract, and not

ratifying an existing one. *Melhado v. Porto Alegre, &c., Co.*, L. R. 9 C. P. 503; *In re Empress Engineering Co.*, 16 Ch. D. 125.

§ 3. **Torts.**—The doctrine of ratification is also applied to torts, as where a person ratifies a trespass. *Hull v. Pickersgill*, 1 Brod. & B. 232. See **ADOPTION**, § 1; **AUTHORITY**; **OMNIS RATIHABITIO RETROTRAHITUR**, &c.; **REPUDIATION**; **ULTRA VIRES**.

RATIFICATION, (what is not). 1 Bradw. (Ill.) 273.

RATIFICATION OF TREATIES.

—See **TREATY**.

RATIFIED AND CONFIRMED, (in a statute). 7 Pet. (U. S.) 52.

RATIHABITIO.—Confirmation; agreement; consent; approbation of a contract. See **RATIFICATION**.

Ratihabitio mandato æquiparatur: Ratification is tantamount to a direction.

Ratihabitio mandato comparatur (Broom Max. (5 edit.) 867): Ratification is equivalent to command.

RATIO.—An account; a rule of proportion; reason. Also, a cause, or giving judgment therein.

RATIO DECIDENDI.—The point in a case which determines the judgment.

Ratio est formalis causa consuetudinis: Reason is the formal cause of custom.

Ratio est legis anima; mutata legis ratione mutatur et lex (7 Co. 7): Reason is the soul of law; the reason of law being changed, the law is also changed.

Ratio est radius divini luminis (Co. Litt. 232): Reason is a ray of the divine light.

Ratio et auctoritas duo clarissima mundi lumina (4 Inst. 320): Reason and authority, the two brightest lights of the world.

Ratio legis est anima legis (Jenk. Cent. 45): The reason of law is the soul of law.

Ratio potest allegari deficiente lege; sed ratio vera et legalis, et non apparet (Co. Litt. 191): Reason may be alleged when law is defective; but it must be true and legal reason, and not merely apparent.

RATIONABILE ESTOVERIUM.—Alimony.

RATIONABILI PARTE.—An old writ of right for lands, &c.

RATIONABILI PARTE BONORUM.—See **DE RATIONABILI BONORUM PARTE**.

RATIONABILIS DOS.—A widow's third, or reasonable dower.

RATIONALIBUS DIVISIS.—See **DE RATIONALIBUS DIVISIS**.

RATIONE TENURÆ.—Where an individual landowner is liable to repair a highway (the liability to repair that class of way usually resting with the county), the landowner is said to be liable either *ratione tenuræ* or by prescription. By *ratione tenuræ* it is intended in such a case to express, that the landowner's liability to repair the highway is a burden upon his ownership of the land, running with the land, and incident to the tenure thereof. In the general case, even in the case of a private way, the servient owner is not bound to repair the way, but by express agreement or by prescription (or, *semble*, from some necessity or even *ratione tenuræ*) he may be liable to repair it. *Com. Dig. Chimin A. 4*; *Reg. v. Ramsden, El.*, B. & E. 949.

RATIONES.—The pleadings in a suit. *Rationes exercere*, or *ad rationes stare*, to plead.

RATTENING is where the members of a trade union cause the tools, clothes or other property of a workman to be taken away or hidden, in order to compel him to join the union or cease working. It is an offense punishable by fine or imprisonment. 38 and 39 Vict. c. 86, § 7. See **MOLESTATION**.

RAVISH, (defined). 3 Ind. 225; 12 Serg. & R. (Pa.) 70.

— (is necessary in an indictment for rape). 50 Barb. (N. Y.) 128; 42 Tex. 226.

RAVISHED.—An indispensable word in indictments for rape.

RAVISHED, (imports the use of force). 8 Gray (Mass.) 490.

RAVISHMENT.—(1) Abduction; rape. (2) The old name for the tortious act of taking away a wife from her husband, or a ward from his guardian. One of the remedies was by writ or action of ravishment, called, in the case of a ward, "*ravishment de gard*." Co. Litt. 136 b; 3 Bl. Com. 139 *et seq*.

RAVISHMENT DE GARD.—Ravishment of ward. An abolished writ which lay for a guardian by knight's service or in socage, against a person who took from him the body of his ward.—*F. N. B.* 140; 12 Car. II. c. 3.

RE.—In the matter of. Thus, *Re Vivian* signifies in the matter of Vivian, or in Vivian's Case. In this use of the word, *res* is opposed to *causa* (cause).

Re, verbis, scripto, consensu, traditione, junctura, vestus sumere pacta

solent (Plowd. 161b): The following things combined constitute a contract, namely, the subject-matter, words, [or] writing, consent, delivery.

RE. FA. LO.—The abbreviation of *recordari facias loquelam* (q. v.)

READERS.—In the Middle Temple, those persons were so called who were appointed to deliver lectures or “readings” at certain periods during term. The clerks in holy orders who read prayers and assist in the performance of divine service in the chapels of the several inns of court, are also so termed. 5 Reeves Hist. Eng. Law (1 edit.) 247.

READING-IN.—The title of a person admitted to a rectory or other benefice, will be divested unless within two months after actual possession he publicly read in the church of the benefice, upon some Lord’s-day, and at the appointed times, the morning and evening service, according to the book of common prayer; and afterwards, publicly before the congregation, declare his assent to such book; and also publicly read the Thirty-nine Articles in the same church, in the time of common prayer, with declaration of his assent thereto; and, moreover, within three months after his admission read upon some Lord’s-day in the same church, in the presence of the congregation, in the time of divine service, a declaration, by him subscribed before the ordinary, of conformity to the Liturgy, together with the certificate of the ordinary of its having been so subscribed. (2 Steph. Com. (7 edit.) 687.)—*Wharton*.

READY TO BE DELIVERED, (in a submission to arbitration). 4 East 584; 6 Mod. 160, 176.

READY TO RENDER, (in a return by sheriff). 2 Rand. (Va.) 323.

READY TO SATISFY, (in a return by sheriff). 3 Rand. (Va.) 8.

RE-AFFORESTED.—Where a de-afforested forest is again made a forest. 20 Car. II. c. 3.

REAL ACTION.—One brought for the specific recovery of lands, tenements and hereditaments.

Among the civilians, real actions, otherwise called “vindICATIONS,” are those in which a man demanded something that was his own. They were founded on dominion, or *jus in re*.

The real actions of the Roman law were not like the real actions of the common law, confined to real estate, but they included personal as well as real property. But the same distinction as to classes of remedies and actions pervades the common and civil law. Thus we have in the common law, the distinct classes of real actions, personal actions and mixed actions. The first, embracing those which concern real estate where the proceeding is purely *in rem*; the next embracing all suits *in personam* for contracts and torts; and the last embracing those mixed suits where the person is liable by reason of and in connection with property. Story Conf. L. 781.

REAL ACTION, (what is). 4 Pick. (Mass.) 169.

REAL ACTION, (in statute regulating costs on appeal). 10 Pick. (Mass.) 473.

REAL ACTIONS, (release of all). Shep. Touch. 340.

REAL and PERSONAL.—Real and personal property is the most fertile division of things, the subjects of property, in English law. The division is substantially coincident with that into *lands, tenements and hereditaments*, on the one hand, and *goods and chattels* on the other. In the case of each division, the principle underlying the division is feudal; it is directly so in the case of the division into lands and chattels, and indirectly so in the case of the division into real and personal property. As law and society progressed, it became more and more apparent that the essential difference between lands and goods was to be found in the remedies for the deprivation of either; that as to the one, the *real* land, *i. e.* the land itself, could be recovered, and that as to the other, proceedings could be had against the *person* only. The two great classes of property accordingly began to acquire two other names that were characteristic of this difference; and with reference to the remedies for the recovery of each, they were called respectively “*real*” and “*personal*” property. The striking circumstance that a leasehold interest in land is to the present day personal property only illustrates both the origin and the principle of this division. It illustrates the *origin* of the division, because originally all leases were farming leases, and the farmer was only the bailiff or agent of his landlord, who warranted him in the quiet possession of the land; it also illustrates the *principle* of the division, because the farmer, in the case of an ejectment, had no action for the recovery of the land itself, but at the most an action against his landlord personally, whereby he compelled the latter either to take proceedings for the restitution of the land to his lessee, or else to compensate him in damages for the disturbance of his quiet enjoyment.—*Brown*.

REAL AND PERSONAL, (in a deed). 4 Rand. (Va.) 199.

REAL ASSETS.—Lands or real estate in the hands of an heir, chargeable with the payment of the ancestor’s debts.

REAL BURDEN.—In Scotland, where a right to lands is expressly granted under the burden of a specific sum, which is declared a burden on the lands themselves, or where the right is declared null if the sum be not paid, and where the amount of the sum, and the name of the creditor in it can be discovered from the records, the burden is said to be "real."—*Bell Dict.*

REAL CHATTELS.—See CHATTELS, § 1.

REAL COMPOSITION.—An agreement made, in England, between the owner of land and the incumbent of a parish, with the consent of the ordinary and the patron of the living, that the land shall for the future be discharged from payment of tithes, by reason of some land or other real recompense given in lieu and satisfaction thereof. But since the Stat. 13 Eliz. c. 10, no real composition can be made for any longer term than three lives or twenty-one years, and such compositions are now rarely heard of. 2 Bl. Com. 28; see Stat. 2 and 3 Will. IV. c. 100, § 2, making valid all compositions confirmed in a certain manner. See TITHES.

REAL CONTRACT.—(1) A contract respecting real property. (2) In the civil law, a contract concerning property of any kind, as distinguished from a mere consensual contract (*q. v.*)

REAL COST, (equivalent to "actual cost" or "prime cost"). 2 Mas. (U. S.) 53, 55.

REAL COVENANT.—See COVENANT, § 3.

REAL EFFECTS, (in a will). 4 Wash. (U. S.) 645; Penn. (N. J.) 602; Cowp. 299, 306; 16 East 221.

REAL ESTATE.—Landed property, including all estates and interests in lands which are held for life or for some greater estate, and whether such lands be of freehold or copyhold tenure.

REAL ESTATE, (defined). 82 Ill. 246.

(includes what). 4 Mas. (U. S.) 467; 1 Cal. (N. Y.) Cas. 47, 65; 14 Wend. (N. Y.) 40. — (when does not embrace chattel interest). 20 Wend. (N. Y.) 416.

(improvements upon). 72 Ill. 438.

(in a statute). 88 Ill. 90; 14 Bush (Ky.) 1; 3 Metc. (Ky.) 164; 30 Barb. (N. Y.) 494; 73 N. Y. 355; 82 Id. 459; 17 Wend. (N. Y.) 673.

(in a will). 3 Minn. 209, 215; 3 Ch. D. 763.

REAL ESTATE, ALL HIS, (in a will). 4 Barn. & C. 610.

REAL ESTATE, BE DEEMED, (in a statute). 60 Me. 196.

REAL ESTATE BROKER.—A broker who engages in the purchase and sale of real estate as a business, and holds

himself out to the public in that character and capacity. See BROKER, § 2.

REAL ESTATE SECURITY, (what is). 20 Ohio St. 442.

REAL ESTATES, (direction in a will to executors to sell). Jacob 534.

REAL EVIDENCE.—Called also *evidentia rei vel facti*, means all evidence of which things (or persons regarded as things) is the source. It is sometimes *direct*, *e. g.* when the offense is committed *in fori conspectu*; but it is most usually circumstantial or indirect. A coroner's inquest must be held *super visum corporis*; and in all charges of murder, the *corpus delicti* is proved by production of the dead body—two illustrations of direct real evidence of the fact of a crime having been committed. But who the criminal was, is dependent upon (in general) circumstantial evidence, the inferences from which are usually not necessary, but probable only, and the degree of probability may vary in ever so many degrees, one physical coincidence being sometimes sufficient in itself, *e. g.* the broken knife left sticking in the window frame, the corresponding fragment of which was found in the pocket of the prisoner accused of burglary, and no sensible interval intervened between the act and his apprehension. But more often circumstantial real evidence is open to innumerable informative hypotheses, that may either weaken it or explain it altogether away. Best Ev. (5 edit.) 277–295.

REAL LAWS.—Laws purely real directly and indirectly regulate property, and the rights of property, without intermeddling with or changing the state of the person.

In regard to laws purely real, Boullenois lays down the rule in the broadest terms, that they govern all real property within the territory, but have no extension beyond it. *Les lois réelles n'ont point d'extension directe ni indirecte hors la juridiction et la domination du législateur.* Story Conf. L. § 426.

REAL PROPERTY.—Property which, on the death of the owner intestate, passes to his heir. Real property is commonly divided into lands, tenements, and hereditaments. See those titles.

REAL PROPERTY, (includes what). 77 N. C. 105.

REAL REPRESENTATIVE.—He who represents or stands in the place of another with respect to his real property, is so termed, in contradistinction to him who stands in the place of another with regard to his personal property, and who is termed the “personal representative.” Thus, the heir is the real representative of his deceased ancestor, and the executor or administrator is the personal representative. See REPRESENTATIVE.

REAL RIGHT.—The right of property, or *jus in re*. The person having such right may sue for the subject itself. A personal right, *jus ad rem*, entitles the party only to an action for performance of the obligation.

REAL SECURITIES, (defined). 3 Atk. 808.
— (in power to loan on mortgage of). 14 Ch. D. 626.

REAL SECURITY.—See SECURITY.

REAL STATUTES.—Statutes which have property for their principal object, and do not speak of persons, except in relation to property. Story Conf. L. § 13.

REAL THINGS.—Things substantial and immovable, and the rights and profits annexed to or issuing out of them. 1 Steph. Com. (7 edit.) 167, 280.

REAL WARRANTICE.—In the Scotch law, an infeoffment of one tenement given in security of another.

REAL WRONG.—In old English law, an injury to the freehold.

REALITY.—See PERSONALITY OF LAWS.

REALIZED, (in a contract). 18 Iowa 218.

REALM.—A kingdom or country.

REALM, DEPARTING THE, (what is). 1 Taunt. 270.

REALTY is the same as real property. In the old books, an “action in the realty” is a real action. Litt. § 315.

REAR, (in a will). 109 Mass. 82.

REAR OF THE SAID LOT, (in a deed). 126 Mass. 404.

REASONABLE.—In general where an agreement between parties is silent on the point, the law imports thereinto a

term that the duties are to be performed within a *reasonable* time, reasonable, *i. e.* having regard to the subject-matter. Whether the time be reasonable or not is a question of fact and is for the jury. So where a railway company is authorized by statute to make by-laws, it is conditional on their making such as are reasonable.—*Wharton*.

REASONABLE, (synonymous with “lawful”). 74 Mo. 216.

— (synonymous with “probable”). 1 T. R. 519.

— (in a statute). L. R. 5 H. L. 636.

REASONABLE ACTS, (covenant to do all). 5 Taunt. 418.

REASONABLE ACTS AND THINGS, (in a covenant). 9 Price 43.

REASONABLE AID.—A duty claimed by the lord of the fee of his tenants holding by knight service, to marry his daughter, &c.—*Cowell*.

REASONABLE AND PROBABLE CAUSE.—Such grounds as justify any one in suspecting another of a crime and giving him in custody thereon. It is a defense to an action for false imprisonment. Whether there be reasonable and probable cause is a question for the court, or judge at *Nisi Prius*. See PROBABLE CAUSE.

REASONABLE ATTORNEY FEE, (when recoverable). 20 Kan. 660.

REASONABLE BELIEF, (in judge's charge to jury). 9 Tex. App. 299.

REASONABLE CARE, or DILIGENCE.—See BAILMENT; CARE; DILIGENCE, § 1; NEGLIGENCE, §§ 4, 5.

REASONABLE CAUSE, (for dissolution of corporation). 119 Mass. 447.

REASONABLE CAUSE TO BELIEVE, (in a statute). 5 Otto (U. S.) 346; 7 *Id.* 81.

REASONABLE CERTAINTY, (what is, of the entries of land in Kentucky). 5 Cranch (U. S.) 191.

REASONABLE COVENANTS, (what are). 2 Bro. P. C. 431.

REASONABLE DOUBT does not mean a mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they

feel an abiding conviction to a moral certainty of the truth of the charge. *Per Shaw, C. J., Trial of Webster.*

REASONABLE DOUBT, (defined). 4 Sawy. (U. S.) 517; 1 Dak. T. 466; 39 Ill. 458; 73 *Id.* 329; 23 Ind. 170; 58 *Id.* 293; 62 Me. 129, 142; 38 Mich. 482; 72 Mo. 376; 2 Dutch. (N. J.) 602; 3 Crim. L. Mag. 350, 351; 7 Pac. C. L. J. 628, 629.

— (what is). 9 Bush (Ky.) 593; 9 Tex. App. 299.

— (in charge by judge to jury). 37 Conn. 355; 9 Bush (Ky.) 593; 62 Me. 129, 142.

REASONABLE DOUBT, CONVINCED BEYOND, (construed). 74 Mo. 213.

REASONABLE DOUBT, PROOF BEYOND, (equivalent to "moral certainty"). 118 Mass. 1, 24.

REASONABLE FINE, (what is). 11 Co. 44.

REASONABLE GROUND, (in a statute). L. R. 9 Q. B. 560.

REASONABLE NOTICE, (defined). 20 Kan. 169.

— (what is). 1 Cranch (U. S.) 260; 2 Dall. (U. S.) 158; 4 *Id.* 2; 3 Day (Conn.) 353; 2 Stockt. (N. J.) 186; 4 Hen. & M. (Va.) 1; 1 T. R. 168.

— (what is not). 2 Serg. & R. (Pa.) 478.

— (is a question of law). 2 Aik. (Vt.) 9; Penn. (N. J.) 916.

— (is a compound question of law and fact). 8 Johns. (N. Y.) 173.

— (is a question for the jury). 1 Minor (Ala.) 85.

— (of a defect in a bridge). 1 Mass. 152.

— (of dissolving partnership). 16 Ves. 56.

— (in a statute). 21 Me. 29; 1 Pa. 462; 5 Barn. & Ald. 539.

REASONABLE PART.—The shares to which the wife and children of a deceased person were entitled, were called their "reasonable parts;" and the writ *de rationabili parte bonorum* was given to recover them (*F. N. B. 122*).—*Brown*.

REASONABLE PORTIONS, (in a will). 1 Beat. Ch. 328.

REASONABLE RATE, (in a statute). 23 Ohio St. 168.

— (for freight over railroad). 67 Ill. 11.

REASONABLE REWARD, (in an agreement). 1 Dana (Ky.) 161.

REASONABLE TIME.—This phrase is not susceptible of abstract definition; what is a reasonable time within which to comply with a statutory command to do an act within a "reasonable time," must be determined by the circumstances of each particular case. *See the authorities referred to below.*

REASONABLE TIME, (defined). 6 Mo. App. 363; 20 Wis. 344.

— (what constitutes). 6 McLean (U. S.) 296, 4 Mas. (U. S.) 336; 1 Newb. (U. S.) Adm.

171; 10 Pet. (U. S.) 223, 514; 7 Wheat. (U. S.) 117; Coxe (N. J.) 86; 8 Serg. & R. (Pa.) 248; 2 Ball. & B. 95; 1 Barn. & Ad. 812; 1 Mod. 139.

REASONABLE TIME, (what is not). 2 Mas. (U. S.) 241.

— (in which executors are to sell land). 1 McCart. (N. J.) 71.

— (in which to deliver a deed). 5 Mass. 494.

— (to demand a deed). 3 C. E. Gr. (N. J.) 401.

— (for demanding payment of a negotiable promissory note). 13 Mass. 131.

— (to claim a salary). 4 Mass. 270.

— (terms of a contract to be performed within). 2 Day (Conn.) 218.

— (within which the insured must abandon to entitle him to recover for a total loss). 4 Mass. 668.

— (is a question of law). 2 Greenl. (Me.) 249; 1 Pick. (Mass.) 43; 7 Cow. (N. Y.) 705, 713; 10 Wend. (N. Y.) 304; 17 *Id.* 354.

— (is a question for the jury). Coxe (N. J.) 48; 9 Wend. (N. Y.) 135; 15 *Id.* 431; 3 Wheel. Am. C. L. 407.

REASONABLY DESCRIPTIVE, (in charge to jury). 2 Serg. & R. (Pa.) 396.

RE-ASSURANCE.—*See RE-INSURANCE.*

RE-ATTACHMENT.—A second attachment of him who was formerly attached and dismissed the court without day, by the not coming of the justices, or some such casualty.—*Reg. Orig.* 35.

REBATE.—A deduction made from a payment. In English bankruptcy proceedings, a creditor who has proved for a debt payable *in futuro* does not receive the full amount of the dividends with the other creditors, but must deduct from each dividend a rebate of interest at five per cent. in respect of the period from the declaration of the dividend to the time when the debt becomes payable. Bankr. Rules (1870), 77.

REBELLION.—(1) The taking up of arms traitorously against the government, whether by natural subjects or others, when once subdued. (2) Disobedience to the process of the courts.

REBELLION, COMMISSION OF.—One of the abolished processes of contempt in the High Court of Chancery.—*Con. Ord.* (1860), xxx. r. 5.

REBELLIOUS ASSEMBLY.—A gathering of twelve persons or more, intending, going about, or practicing unlawfully and of their own authority, to change any laws of the realm; or to destroy the enclosure of any park or ground enclosed, banks of fish ponds,

pools, conduits, &c., to the intent the same shall remain void, or that they shall have way in any of the said grounds; or to destroy the deer in any park, fish in ponds, coney in any warren, dove-houses, &c.; or to burn sacks of corn; or to abate rents, or prices of victuals, &c. *See Cowell.*

REBOUTER.—To repel or bar.

REBUILD, (defined). 3 Rawle (Pa.) 482.

— in a covenant to. 3 Atk. 512.

REBUILDING AND REPAIRING, EFFECTUALLY, (not equivalent to "effectually repairing"). 2 Barn & Ad. 896.

REBUS SIC STANTIBUS.—At this point of affairs.

REBUT.—

§ 1. **Presumption.**—To rebut is to defeat or take away the effect of something. Thus, when a plaintiff in an action produces evidence which raises a presumption of the defendant's liability, and the defendant adduces evidence which shows that the presumption is ill-founded, he is said to rebut it. *See PRESUMPTION.*

§ 2. **Evidence.**—So, on a trial, when a fresh case, *i. e.* a case not merely answering the case of the party who began, is set up by the responding party, and evidence is adduced in support of such fresh case, the party who began may give evidence to rebut it, called "rebutting evidence," or proof of a rebutting case. *Best Ev.* 785.

REBUTTER.—

§ 1. **Pleading.**—The pleading which, under the old practice, followed the surrejoinder. (5 Steph. Pl. 64; Mitf. Pl. 321.) It is rare at common law, and has long been obsolete in English Chancery practice; but the name is still applicable to the corresponding pleading under the new system. *See PLEADING.*

§ 2. In the old law of real property, to rebut was to repel or bar a claim. Thus, when a person was sued for land which had been warranted to him by the plaintiff or his ancestor, and he pleaded the warranty as a defense to the action, this was called a "rebutter." *Co. Litt.* 365a; *Termes de la Ley*, s. v.

REBUTTING EVIDENCE.—*See REBUT*, § 2.

REBUTTING EVIDENCE, (defined). 3 Steph. Com. 539.

— (what is not). 65 Me. 126.

RECALL.—To supersede a minister, or deprive him of his office; also to revoke a judgment on a matter of fact.

RECAPTION.—A species of remedy by act of the party which may be resorted to when a man has deprived another of his goods, or wrongfully detains his wife, child or servant; then the person injured may lawfully claim and retake them, so it be not in a riotous manner, or attended with a breach of the peace. 3 Steph. Com. 242. *See WRIT OF RECAPTION.*

RECAPTURE.—By the doctrine of *postliminium* (q. v.) property which has been captured by an enemy and recaptured within twenty-four hours or before being taken to a place of safety, reverts to its original owner; the rule, however, varies with different nations. By the English Naval Prize Act, 1864, property captured at sea and recaptured at any time afterwards, is to be restored to the owner on his paying to the recaptor prize-salvage at a rate to be fixed by the Prize Court. *Man. Int. Law* 190 *et seq.*

Receditur a placitis juris potius quam injuriæ et delicta maneant impunita (Bacon): We surrender the forms of law rather than allow injuries to remain unpunished.

RECEIPT.—

§ 1. Receipt generally means an acknowledgment of the receipt of money paid in discharge of a debt. (*See ACCOUNTABLE RECEIPT.*) A receipt under hand alone is in general only *primæ facie* evidence, but a receipt under seal amounts to an estoppel, and is conclusive. *Best Ev.* 521.

§ 2. Formerly, in certain real and mixed actions, if a man seised of land in right of his wife was sued in respect of the land and made default, the wife might be received or admitted as a *feme sole* to defend her right. This was called "receipt" or "*defensio juris*." *Co. Litt.* 352b *et seq.*

RECEIPT, (defined). 53 Ind. 561; 10 Ohio 75.

— (what is). 8 Car. & P. 180.

— (what is not). 9 Humph. (Tenn.) 55; 1 Exch. 131.

— (effect of). 1 Pet. (U. S.) C. C. 182; 1 Wash. (U. S.) 328; 4 Ill. 562; 1 J. J. Marsh. (Ky.) 388; 4 Harr. & M. (Md.) 219; 4 Hawks (N. C.) 22; 7 Wheel. Am. C. L. 242, 252, 506, 508; 3 Barn. & Ad. 313; 7 Bing. 574; 2 Campb. 561; 1 Esp. 173; Lofft 303; 6 Moo. 355; 2 T. R. 366.

RECEIPT, (is a discharge for money). 2 Allen (Mass.) 161.

— (is no evidence of a contract). 11 Mass. 32, 33.

— (when not a release). Taney (U. S.) Dec. 448.

— (acknowledgment of, in a deed is conclusive evidence). 11 Mass. 32n.

— (when not conclusive). 11 Mass. 143, 145; 17 *Id.* 249, 257; 3 Gr. (N. J.) 423; 2 Halst. (N. J.) 349; 2 Johns. (N. Y.) 378; 5 *Id.* 68; 1 Johns. (N. Y.) Cas. 145; 14 Wend. (N. Y.) 116; 2 Aik. (Vt.) 204.

RECEIPT IN FULL, (effect of). 1 Campb. 392. — (is evidence that both sides of an account were settled). 9 Wend. (N. Y.) 323.

RECEIPT OF PURCHASE MONEY, (acknowledged in a deed). 1 Greenl. (Me.) 1; 1 Harr. & G. (Md.) 139; 3 Dowl. & Ry. 99.

RECEIPTOR.—A person to whom property is bailed by an officer, who has attached it upon mesne process, to answer to the exigency of the writ, and satisfy the judgment, the understanding being to have it forthcoming on demand. *See* Story Bailm. 145.

RECEIPTS, (in section 1825 of Code). 41 Ala. 267.

RECEIVE, (in a statute will apply to real estate). 4 Cush. (Mass.) 448, 453.

— (in a power of attorney). 1 Taunt. 347.

— (in a notice of the dissolution of a partnership). 1 H. Bl. 155.

RECEIVE OR TAKE, SHALL, (in a statute). 12 Serg. & R. (Pa.) 47.

RECEIVED, (in a receipt). 2 Gill & J. (Md.) 511.

— (in a will). 1 App. Cas. 428.

RECEIVED FOR RECORD, (indorsed on a deed). 2 Root (Conn.) 298.

RECEIVED ON WITHIN, INTEREST UP TO DATE, (indorsed on promissory note). 18 Minn. 66.

RECEIVER.—

§ 1. **Property in litigation.**—In an action in equity, a receiver is a person appointed by the court, on an interlocutory application, to receive the rents and profits of real estate, or to get in and collect personal property affected by the proceedings, where it appears desirable that he should do so in lieu of the person then having the control of the property, or where the latter is incompetent to do so, as in the case of an infant. The object is to protect the property until the rights of the parties have been ascertained; thus, in an action for the dissolution of a partnership, or the foreclosure of a railroad mortgage, a receiver is frequently appointed to

get in or realize the assets. A receiver is an officer of the court, and generally has to give security for the due performance of his duties. Dan. Ch. Pr. 1563, 1575. *See* MANAGER.

§ 2. **Equitable execution.**—A receiver is also sometimes appointed to enforce a judgment when the property of the defendant is such that ordinary execution by *fi. fa.*, *elegit*, or the like, is inapplicable. As to this, *see* EXECUTION, § 5.

§ 3. **Bankruptcy.**—In English bankruptcy practice, a receiver of the property of the debtor may be appointed by the court at any time after the presentation of the petition for adjudication, liquidation, or composition. A receiver may also be appointed by the creditors themselves in an arrangement by liquidation or composition. Robs. Bankr. 335, 653; Bankr. Act, 1869, § 13; Bankr. Rules (1870) 260.

§ 4. **Lunacy.**—A receiver may be appointed in lunacy proceedings. Pope Lun. 124.

§ 5. **Agreement of parties.**—Sometimes provision is made by agreement for the appointment of a receiver in an extrajudicial matter; thus, a mortgage deed may contain an appointment of, or a power for the mortgagee to appoint, a person to be receiver or receiver and manager of the mortgaged property, in order to secure to the mortgagee the payment of his interest out of the rents and profits. (Fish. Mort. 375; 2 Dav. Prec. Conv. 648.) As to the statutory power, *see* 23 and 24 Vict. c. 145, § 11. For the old sense of receiver as a person bound to account, *see* Co. Litt. 172a. A debenture may contain a similar provision. *See* DEBENTURE.

RECEIVER, (power of the court over). 5 Paige (N. Y.) 125; 6 *Id.* 102; 3 Wend. (N. Y.) 598; 16 *Id.* 405, 409.

— (appointing of, when is not a turning the party out of possession). 3 P. Wms. 379.

RECEIVER-GENERAL OF THE DUCHY OF LANCASTER.—An officer of the Duchy Court, who collects all the revenues, fines, forfeitures and assessments within the duchy.

RECEIVER-GENERAL OF THE PUBLIC REVENUE.—An officer appointed in every county in England to receive the taxes granted by parliament, and remit the money to the treasury.

RECEIVER OF THE FINES.—An officer who received the money of all such as

compounded with the crown on original writs sued out of chancery.

RECEIVERS, (in railroad trust mortgage). 24 Minn. 464.

RECEIVERS AND TRIERS OF PETITIONS.—The mode of receiving and trying petitions to parliament was formerly judicial rather than legislative; and the triers were committees of prelates, peers, and judges; and latterly, of the members generally.—*Brown*.

RECEIVERS OF WRECK.—Persons appointed by the English board of trade. The duties of a receiver of wreck are to take steps for the preservation of any vessel stranded or in distress within his district; to receive and take possession of all articles washed on shore from the vessel; to use force for the suppression of plunder and disorder; to institute an examination on oath with respect to the vessel; and, if necessary, to sell the vessel, cargo or wreck. Merchant Shipping Act, 1854, § 439 *et seq.* See WRECK.

RECEIVERS OF WRECK, (duties of). 2 Steph. Com. 544.

RECEIVING OR RELIEVING A FELON, (what is). 1 Chit. Cr. L. 264, 265.

RECEIVING STOLEN GOODS.—The short name usually given to the offense of receiving any property with the knowledge that it has been feloniously or unlawfully stolen, taken, extorted, obtained, embezzled or disposed of. The crime is a felony or misdemeanor according as the original stealing, &c., was a felony (either at common law or under the Stat. 24 and 25 Vict. c. 96), or misdemeanor (under the same statute), and is punishable with imprisonment for various terms, in the different jurisdictions.

RECENT POSSESSION.—See Possession, § 4.

RECEPTUS.—In the civil law, an arbitrator.

RECESSION.—A re-grant.

RECIDIVE.—In the French law, a relapse; the commission of a second offense.

RECIPROCAL CONTRACT.—A contract the parties to which enter into mutual engagements. A mutual contract.

RECIPROCAL DEMANDS, (in statute of limitations). 79 N. Y. 1, 8.

RECIPROCITY.—Mutuality (*q. v.*) (Arnold *v.* Mayor of Poole, 4 Man. & G. 860.) The term is used in international

law to denote the relation existing between two States when each of them gives the subjects of the other certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the latter State.

RECITAL.—

§ 1. Recitals in a deed, agreement or other formal instrument are statements introduced to explain or lead up to the operative part of the instrument. They are generally divided into narrative recitals, which set forth the facts on which the instrument is based; and introductory recitals, which explain the motive for the operative part. Thus, in an assignment of leasehold property, the deed commences by reciting the lease, *i. e.* by stating that by an indenture of such a date made between such and such parties the property was demised to the lessee for a certain term—this is a narrative recital; the deed then recites that the assignee has agreed with the assignor (the original lessee) for the purchase of the property for the residue of the term—this is an introductory recital, being followed immediately by the operative part or assignment. (1 Dav. Prec. Conv. 44 *et seq.*; Shep. Touch. 76.) A formal recital always commences with the word “whereas.”

§ 2. A recital is evidence as against the parties to the instrument and those claiming under them, and in an action on the instrument itself (though not on a collateral matter) the recitals operate as an estoppel (*q. v.*) (1 Dav. Prec. Conv. 60; *Ex parte* Morgan, 2 Ch. D. 72.) By the English Vendors and Purchasers Act, 1874, recitals in deeds and other instruments twenty years old are made *prima facie* evidence of the truth of the facts, matters and descriptions therein recited. See Bolton *v.* London School Board, 7 Ch. D. 766.

RECITAL, (defined). 3 Pa. 324-331; Shep. Touch. 76.

— (in an agreement). 2 Munf. (Va.) 185.

— (in articles of marriage settlement). 1 Swanst. 106.

— (in a bond). 3 Halst. (N. J.) 1; 1 Hill (N. Y.) 343; 2 Hen. & M. (Va.) 398.

— (in a charter). 10 Serg. & R. (Pa.) 269.

— (in a covenant). 1 Marsh. (Ky.) 475; 2 Bos. & P. 25.

RECITAL, (in a deed). 7 Cranch (U.S.) 168; 1 Dall. (U.S.) 67; 4 Pet. (U.S.) 83; 6 *Id.* 598; 10 *Id.* 265; 1 Mon. T. 471; 2 Root (Conn.) 252; Coxe (N. J.) 172; 7 Halst. (N. J.) 25, 337; Penn. (N. J.) 412, 1050; 9 Johns. (N. Y.) 92, 169; 5 Johns. (N. Y.) Ch. 26; 7 Wend. (N. Y.) 83; 9 *Id.* 209; 11 *Id.* 116, 422; 1 Pa. 402; 16 Serg. & R. (Pa.) 113; 4 Wheel. Am. C. L. 246; 3 Bro. Ch. 28; 3 Ch. Cas. 101; 15 East 530; 11 *Id.* 493; 1 Leon. 122; 6 Mod. 44; 4 Moo. 448; 2 P. Wms. 533; Willes 9; 2 Younge & J. 407

— (prefixed to a judgment). 2 Day (Conn.) 12.

— (in a patent). 4 Serg. & R. (Pa.) 353; 2 Watts (Pa.) 478.

— (in a statute). 3 Litt. (Ky.) 480; 1 Watts (Pa.) 355; 8 Wheel. Am. C. L. 137; 2 Younge & J. 196.

— (in a submission of arbitration). 2 Munf. (Va.) 1.

— (in a warrant of arrest). 23 Wend. (N. Y.) 640.

— (in a will). 3 Johns. (N. Y.) Cas. 174; 3 Watts (Pa.) 449; 18 Ves. 27, 41.

RECITE, TO.—To state or set forth in any deed or other writing such matters of fact as may be necessary to explain the nature of the transaction, or the reasons upon which it is founded.

RECLAIM.—To demand back a consideration given on the failure of the other party to perform his part of the contract.

RECLAIMED ANIMALS.—Those that are made tame by art, industry or education, whereby a qualified property may be acquired in them. *See* ANIMAL, §§ 2, 3.

RECLAIMING.—The action of a lord pursuing, prosecuting, and recalling his vassal, who had gone to live in another place, without his permission. Also the demanding of a thing or person to be delivered up or surrendered to the prince or state it properly belongs to, when by an irregular means it has come into the possession of another.

RECLAIMING PETITION.—A petition of appeal to the Inner House from the judgment of any Lord Ordinary in the Court of Session in Scotland.

RECOGNITION.—An acknowledgment; a ratification (*q. v.*)

RECOGNITIONE ADNULLANDA PER VIM ET DURITIEM FACTA.—A writ to the justices of the Common Bench for sending a record touching a recognizance, which the recognizer suggests was acknowledged by force and duress; that if it so appear, the recognizance may be annulled.—*Reg. Orig.* 183.

RECOGNITORS of an assise were the jurors in an assise of novel disseisin or the like. Litt. § 366; Co. Litt. 227 b. *See* ASSISE.

RECOGNIZANCE.—

§ 1. At common law a recognizance is an obligation or bond acknowledged before some court of record or magistrate duly authorized, and afterwards entered of record, *i. e.* enrolled in some court of record (*q. v.*) The person acknowledging it, *i. e.* the person bound by it, is called the "conusor" (or cognisor), and the person in whose favor it is made, the "conusee" (or cognisee). The object of a recognizance is to secure the performance of some act by the conusor, such as to appear at the assizes, to keep the peace, to pay a debt, to pay costs, &c. (2 Bl. Com. 341; 2 Wms. Saund. 197.) A receiver appointed by a court of equity is sometimes ordered to enter into a recognizance with sureties to secure the payment of the moneys received by him. *See* ENROLMENT; PETTY BAG OFFICE; VACATE.

§ 2. Formerly, in England, a recognizance bound the lands of the conusor, but this is no longer so. (Stat. 27 and 28 Vict. c. 112; Wms. Real Prop. 90; *see* JUDGMENT, § 16.) A recognizance, however, if enrolled, still has priority over the ordinary debts of the conusor on his death. (Wats. Comp. Eq. 36; *see* ADMINISTRATION, § 2.) And there are cases in which execution may be issued on a recognizance without any preliminary proceeding, namely, if no extrinsic evidence is required to show that the amount is due (*e. g.* where the recognizance is a simple acknowledgment of a debt.) (Fost. Sci. Fa. 295; 2 Wms. Saund. 197.) The most usual way of enforcing a recognizance is by *scire facias* (*q. v.*) *See* ESTREAT.

§ 3. **Statutory.**—Recognizances by statute are those created under 23 Hen. VIII. c. 6, and called "recognizances in the nature of statute staples," because they have the same formalities and effects as statute staples, except that they are acknowledged before judges instead of mayors. (2 Bl. Com. 342; 2 Wms. Saund. 218.) They are obsolete. *See* STATUTE MERCHANT AND STAPLE.

§ 4. **In criminal law,** a person who has been found guilty of an offense, may, in certain cases, be required to enter into a recognizance by which he binds himself to keep the peace for a certain period. And recognizances are used in many States as bail bonds, and in some the security given by a convicted person on his appeal is called a "recognizance."

RECOGNIZANCE, (defined). 53 Ill. 434; 12 Kan. 463; Shep. Touch. 354.

RECOGNIZANCE, (must recite the cause in its caption). 9 Mass. 520; 16 *Id.* 447.

— (must be made a record of a court to sustain a suit). 4 Wend. (N. Y.) 337

— (not enrolled is looked upon as a bond). 1 P. Wms. 334.

RECOGNIZE.—(1) To try; to examine in order to determine the truth of a matter. (2) To enter into a recognizance.

RECOGNIZEE.—He to whom one is bound in a recognizance.

RECOGNIZOR.—He who enters into a recognizance.

RECOLEMENT.—In the French law, re-examination.

RECOLLECT, (in an affirmation). 1 Dana (Ky.) 56.

RECOMMEND, (in a will). 7 Price 212, 220; 2 Ves. 333, 335, 529, 633.

RECOMMENDATION, (words of, in a will). 2 Cox Ch. 349, 354, 396; Jac. 317; 7 Jur. 1147; 2 Myl. & K. 197; 3 Ves. 8, 150; 7 *Id.* 85; 8 *Id.* 379, 380; 9 *Id.* 546; 10 *Id.* 546; 19 *Id.* 664; 1 Sim. & S. 387, 389; 2 Younge & Coll. C. C. 582; 8 Com. Dig. 997.

RECOMMENDATION, FALSE, (action for). 7 Wend. (N. Y.) 22; 14 *Id.* 126.

RECOMMENDATORY, (when a statute is). 1 Yeates (Pa.) 462.

RECOMPENSATION.—In Scotland, where a party sues for a debt, and the defendant pleads compensation, *i. e.* set-off, the plaintiff may allege a compensation on his part, and this is called a "recompensation."

RECONCILIATION.—The act of bringing persons to agree together, who before had had some difference. A renewal of cohabitation between husband and wife is proof of reconciliation; and such reconciliation destroys the effect of a deed of separation. (4 Eccl. 238.)—*Bouvier*.

RECONDUCTION.—In the civil law, a relocation; a renewal of a lease.

RECONSIDER, (right of deliberative bodies to). 2 Halst. (N. J.) 101.

RECONSTRUCTION OF COMPANY.—In English law, a company in voluntary liquidation may be reconstructed under § 161 of the Companies Act, 1862, by a transfer of its undertaking to another company. A company in liquidation, whether voluntary, compulsory, or under supervision, may be reconstructed by arrangement with its creditors under the Joint Stock Companies Arrangement Act, 1870. See Lind. Part. 1308; *In re Wedgwood Coal and Iron Co.*, 6 Ch. D. 627.

RECONTINUANCE seems to be used to signify that a person has recovered an incorpo-

real hereditament of which he had been wrongfully deprived. Thus, "A. is disseised of a manor, whereunto an advowson is appendant, an stranger [i. e. neither A. nor the disseisor] usurpes to the advowson, if the disseisee [A.] enter into the manor the advowson is recontinued again, which was severed by the usurpation. . . . And so note a diversitie between a recontinuance and a remitter; for a remitter cannot be properly, unless there be two titles; but a recontinuance may be where there is but one." Co. Litt. 363 b. See DISCONTINUANCE; REMITTER.

RECONVENTION.—In the civil law, an action by a defendant, against a plaintiff in a former action; a cross-bill or litigation.

RECONVERSION.—That imaginary process by which a prior constructive conversion is annulled and the converted property restored in contemplation of law to its original state. Thus, if real estate is devised to A., upon trust to sell and to pay the proceeds to B., the realty, by virtue of this absolute trust, is constructively converted into personal estate; but if B., before the property is sold, elects to take it as land, it is then said to be reconverted, and A. is bound to convey the land to him accordingly. (Haynes Eq. 390; Snell Eq. 160.) This is called "reconversion by act of the party." The right of reconversion cannot be exercised to the prejudice of other persons (*e. g.* joint owners or remaindermen). Reconversion by operation of law is where the property originally directed to be converted comes into the possession of a person absolutely entitled to dispose of it, and is left by him in its original condition, without any declaration of his intention regarding it. Snell Eq. 166. See RESULT, § 3.

RECONVEYANCE takes place where a mortgaged debt is paid off, and the mortgaged property is conveyed again to the mortgagor or his representatives free from the mortgage debt. The operative words used in a reconveyance are the same as those which would be used if it were an ordinary conveyance between the parties, the *habendum* expressing that the property is discharged from the debt. The reconveyance is usually indorsed on the mortgage. 2 Dav. Prec. Conv. 824.

RECORD.—

§ 1. Records "are the memorials of the legislature, and of the king's courts of

justice, and are authentic beyond all matter of contradiction." (Gilb. Ev. 5.) "But legally records are restrained to the rolles of such [courts] only as are courts of record, and not the rolles of inferiour, nor of any other courts which proceed not *secundum legem et consuetudinem Angliæ*. And the rolles being the records or memorials of the judges of the courts of record, import in them such incontrollable credit and veritie, as they admit no averment, plea, or prooffe to the contrarie. And if such a record be alleaged, and it be pleaded that there is no such record, it shall be tried only by it selfe." Co. Litt. 260a; see Best Ev. 735. See **NUL TIEL RECORD**; **RES JUDICATA**; **TRIAL**.

§ 2. Records are of the following principal kinds: (1) Statutes, attainders and other legislative proceedings. (2) Judgments, fines, inquisitions, extents, returns to writs of *mandamus*, *habeas corpus*, &c., and other proceedings of courts of record. (3) Recognizances, government grants, letters-patent, and other instruments of an extra-judicial nature which have been enrolled.

§ 3. **Stealing, &c., records.**—Stealing, injuring, forging or falsifying a record is felony, punishable with imprisonment for terms varying in the different jurisdictions.

§ 4. **Nisi prius record.**—Under the English common law practice, the *nisi prius* record was a copy of the issue (*q. v.*, § 8) as delivered in the action, engrossed on parchment. It was the official statement of the writ and pleadings for the use of the judge at *nisi prius*; to it were annexed the particulars of demand and set-off, if any (see **BILL OF PARTICULARS**); and on it were subsequently entered the *postea* (*q. v.*) and judgment. The record was delivered to the proper officer of the court (generally the associate), which was commonly called "entering the record," and it was retained by him until the case was disposed of, unless the plaintiff was not prepared to proceed with the trial, in which case he could withdraw the record, so as to prevent the trial from going on. (Chit. Gen. Pr. 361, 381.) Now, in lieu of making up the record, the party entering the action for trial delivers to the officer two copies of the pleadings, one of which is for the use of the judge, (Rules of Court, xxxvi., 17, 17 a,) and is sometimes referred to as the record. (See Judicature Act, 1875, § 22.) The practice of withdrawing the record has been abolished; but the court may order the action to be discontinued, on terms. Rules of Court, xxiii., 1; Arch. Pr. 350.

RECORD, (what is not a part of). 12 Wheat. (U. S.) 118; 1 Pa. 129.
— (in a statute). 8 Co. 161.

RECORD AND WRIT CLERKS.—Officers of the English Court of Chancery and of the Chancery Division of the High Court, having the management of the office where bills and answers (under the old practice), affidavits, &c., were filed and writs issued. (Second Report Legal Dep. Comm. 43; Dan. Ch. Pr. 1712.) The existing record and writ clerks were converted into masters of the Supreme Court by the Judicature (Officers) Act, 1879, and their office abolished. See **MASTERS**, § 1.

RECORD, CONVEYANCES BY.—Extraordinary assurances, as private acts of parliament, and royal grants.

RECORD, COURTS OF.—Those whose judicial acts and proceedings are enrolled in parchment, for a perpetual memorial and testimony; which rolls are called the "records of the court," and are of such high and supereminent authority, that their truth is not to be called in question. Every court of record has authority to fine and imprison for contempt of its authority. 3 Broom & H. Com. 21, 30.

RECORD, COURTS OF, (defined). 3 Bl. Com. 24.

RECORD, DEBTS OF.—Those which appear to be due by the evidence of a court of record, such as a judgment, recognizance, &c. (2 Broom & H. Com. 655.) In England, since January 1st, 1870, all specialty and simple contract debts of deceased persons stand in equal degree in the administration of the estate of any one deceased. 32 and 33 Vict. c. 46.

RECORD, JUDGE OF, (power to fine and imprison makes). 1 Ld. Raym. 454.

RECORD OF COURT, (truth of, cannot be called in question). 34 Cal. 391.

RECORD OF NISI PRIUS.—See **RECORD**, § 4.

RECORD, TRIAL BY.—If a record be asserted on one side to exist, and the opposite party deny its existence, thus, "that there is no such record remaining in court as alleged," and issue be joined thereon, this is an issue of *nul tiel* record; and the court awards a trial by inspection of the record. Upon this, the party affirming its existence is bound to produce it in court on a given day; failing to do so, judgment is given for his adversary. The trial by record is the only legitimate mode

of trying such issue. Steph. Pl. (7 edit.) 99; 2 Chit. Arch. Pr. (12 edit.) 937.

RECORDARI FACIAS LOQUE-LAM.—A writ formerly used to remove a suit from an inferior court not of record into one of the superior courts of common law; e. g. a suit of replevin in the sheriff's county court.—*F. N. B. 70*. It seems to be obsolete. See **CERTIORARI**.

RECORDATUR.—An order that the verdict returned on the *Nisi Prius* roll be recorded.

RECORDED, (when a written memorandum is). 50 Vt. 251.

— (when commissions are). 1 Cranch (U. S.) 161.

RECORDED DEED, (what is not). 1 Rand. (Va.) 219.

RECORDER.—

§ 1. In American law, a judicial officer in many cities, whose jurisdiction is chiefly confined to the trial of criminal prosecutions. Also, an officer charged with the duty of recording deeds and other written instruments, and preserving the records thereof; a register.

§ 2. In English law, the recorder of a borough is a barrister appointed by the crown under the Municipal Corporations Act to act as a justice of the peace in a borough having a separate Court of Quarter Sessions; he receives a salary, requires no property qualification, and takes precedence after the mayor. By virtue of his office he is in ordinary cases judge of any court of record existing within the borough. (Pritch. Quar. Sess. 15; Stat. 5 and 6 Will. IV. c. 76, §§ 103, 118; see **BOROUGH COURTS**.) There are also recorders in cities and boroughs not subject to the Municipal Corporations Acts (e. g. the city of London), whose office has existed from time immemorial, and who are appointed by the respective corporations. Pull. Laws Lond 9, 113. See **CITY OF LONDON COURT**; **COMMISSION OF THE PEACE**; **MAYOR'S COURT OF LONDON**.

RECORDER OF LONDON.—See **RECORDER**, § 2.

RECORDING ACTS.—The statutes in the several States which govern the placing of conveyances, mortgages, &c., on public record, and the effect of such records as constructive notice.

* Proceedings for the recovery of land from a person wrongfully in possession of it, are taken, in England, either in the High Court of Justice, or in the county courts, or before justices.

(1) In the High Court the proceedings are of two kinds. The ordinary action for the recovery of land follows the same course as any other action, except in some cases as regards service of the writ (see **SERVICE**) and appearance (*q. v.*, see, also, **JOINDER**, § 1). (Rules of Court, ix. 8; xii. 18 *et seq.*; xiii. 7; xvii. 2; xiii. 3; xlviii.; Woodf. Land. & T. 750.) It is a substitute for

RECOUP.—To keep back or stop something which is due; to make discount; recompense.

RECOUPMENT.—The act of recouping. When a defendant has a claim against the plaintiff arising out of the transaction upon which plaintiff bases his suit, he may set up such claim as a recoupment or reduction of plaintiff's damages. In this respect recoupment differs from set-off (*q. v.*), which applies to any cross-demand defendant may have against plaintiff, whether arising out of the transaction sued on or not, and is more nearly allied to counter-claim (*q. v.*); but counter-claim seems to be merely the name of the remedy by which recoupment may be secured, and is only in use in courts whose practice is governed by reformed codes of procedure.

RECOUPMENT, (defined). 46 Vt. 200, 207.

— (right of, arises when). 38 Conn. 43.

RECOVER, (equivalent to "collect" or "obtain"). 7 Pet. (U. S.) 128.

— (in a statute). 2 Cai. (N. Y.) 213, 214; 4 Serg. & R. (Pa.) 401, 404; 12 Price 734; 1 Saund. 33 n.

RECOVERED, (defined). 3 Barn. & C. 491, 493.

— (equivalent to "adjudged and received"). 1 Paine (U. S.) 230.

— (in a statute). 13 Allen (Mass.) 301; 14 Vr. (N. J.) 145; L. R. 5 Q. B. 418.

RECOVERED OR CLAIMED, (in a statute). 62 How. (N. Y.) Pr. 181.

RECOVERED OR PRESERVED, (in a statute). L. R. 1 A. & E. 309.

RECOVERED, WHEN, (in a will). 13 Ves. 325.

RECOVERER.—The demandant in a common recovery after judgment in his favor.

RECOVERY.—

§ 1. Recovery, in its general sense, is where a person obtains something which has been wrongfully taken or withheld from him, or to which he is otherwise entitled.* See **REMEDY**.

the old action of ejectment (*q. v.*) An action for the recovery of land under the Common Law Procedure Act, 1852, (§ 213 *et seq.*) may be brought where there is a contract of tenancy in writing, and the tenant holds over after the determination of the tenancy. The chief peculiarity of this action is that the defendant may be ordered to give bail by recognizance with two sureties, in default of which judgment is given for the plaintiff. Woodf. Land. & T. 743.

(2) An action may be brought in a county court by a landlord against his tenant for the

§ 2. **Common recovery.**—A recovery or common recovery was a mode of barring estates tail in use down to the year 1833. It was a judgment in a fictitious suit in the nature of a real action, brought by a friendly plaintiff against the tenant in tail, who, on being sued, vouched (*i. e.* called upon) some person to defend the action, on the ground that he had granted the estate tail to the tenant in tail with warranty of title. (*See* VOUCH; WARRANTY.) This person (the vouchee) was accordingly called on, and, being a party to the scheme, admitted the imaginary grant and warranty, and then allowed judgment to go against him by default; whereupon judgment was given for the plaintiff to recover the lands from the tenant in tail, and the tenant in tail had judgment against the vouchee for lands of equal value. The vouchee being a man of straw (generally the crier of the court), the tenant in tail recovered no such lands, but his own land went to the plaintiff under the judgment, freed from the estate tail and the remainders and reversions expectant on it, and then the plaintiff conveyed it back to him in fee-simple. (*Wms* Real Prop. 45; *Wms* Seis. 157; 2 *Bl. Com.* 357; 1 *Steph. Com.* 568, where the proceedings are described in detail.) In some manors estates tail in copyholds were barred by customary recoveries. (*Wms* Real Prop. 362.) Recoveries were also used for other purposes besides barring estates tail. (*Shelf. R. P. Stat.* 303.) They were abolished by the Fines and Recoveries Act (*q. v.*), which substitutes a simpler disentailing assurance. *Compare* FINE.

RECOVERY, (defined). 2 *Paine* (U. S.) 688; 8 *Murph.* (N. C.) 169.

—(when means "collect" or "obtain").

7 *Pet.* (U. S.) 113, 126.

—(in a statute). 33 *Me.* 179; 103 *Mass.* 117.

RECOVERY OF LAND, (action for). 14 *Ch. D.* 492.

RECREANT.—Yielding. *See* CRAVEN.

RECREATION.—As to easements of recreation, *see* EASEMENT, 429 *n.* Provision is made by the English Inclosure Acts for the appropriation of commons, or parts of commons, for the purposes of exercise and recreation for the inhabitants of the neighborhood, (*Inclosure Act*, 1875, § 30; *Commons Act*, 1876. *See* INCLOSURE;) and by the recreation Grounds Act, 1859, *Stat.* 23 and 24 *Vict.* c. 30; 26 *Vict.* c. 13, and 35 *Vict.* c. 13, provision is made for the formation and management of recreation grounds in and near populous places.

recovery of land, the yearly value or rent of which does not exceed £50, where the tenant holds over, unless there is a dispute as to title. *Id.* 704; *Poll. C. C. Pr.* 277; *County Courts Act*, 1856. As to ejectment in the county courts, *see* EJECTMENT, § 4.

(3) A summary mode of recovering the possession of land held for a term not exceeding seven years, and at a rent not exceeding £20, where the tenant holds over, is given by the

RECRIMINATION.—A charge made by an accused person against the accuser; in particular a counter-charge of adultery or cruelty made by one charged with the same offense in a suit for divorce against the person who has charged him [or her].

RECRUIT.—A newly-enlisted soldier.

RECRUITING EXPENSES, (in a statute). 8 *Allen* (*Mass.*) 80.

RECTA PRISA REGIS.—The king's right to prisage, or taking of one butt or pipe of wine before, and another behind the mast, as a custom for every ship laden with wines.—*Cowell. See* PRISAGE.

RECTIFICATION—RECTIFY.—

§ 1. **Rectification of instrument.**—In English law, to rectify is to correct or define something which is erroneous or doubtful. Thus, where the parties to an agreement have determined to embody its terms in the appropriate and conclusive form, but the instrument meant to effect this purpose (*e. g.* a conveyance, settlement, &c.), is by mutual mistake so framed as not to express the real intention of the parties, an action may be brought in the Chancery Division of the High Court to have it rectified. (*Poll. Cont.* 421, 427; *Mackenzie v. Coulson*, *L. R.* 8 *Eq.* 386; *Snell Eq.* 354; 1 *White & T. Lead. Cas.* 36; *Jud. Act*, 1873, § 34.) The rectification is generally effected by indorsing on the instrument a copy of the judgment or order, declaring in what respects the instrument requires to be rectified. (*Seton Dec.* 1231; *White v. White*, *L. R.* 15 *Eq.* 247.) In America, the corresponding term is reformation (*q. v.*) *See* MISTAKE; RESCISSION.

§ 2. **Rectification of boundaries.**—An action to rectify or ascertain the boundaries of two adjoining pieces of land may be brought in the Chancery Division of the High Court. The court formerly directed a commission to issue (similar to a commission in a partition suit), (1 *Spence Eq.* 655; *Dan. Ch. Pr.* 1033,) but at the present day it would probably direct an inquiry in chambers. (*See* INQUIRY, § 2.) The inclosure commissioners have power to settle confused boundaries in certain cases. *Inclosure Acts*, 1845-6; *Hunt Bound.* 193.

§ 3. **Rectification of register.**—The rectification of a register is the process by which a person whose name is wrongly entered on (or omitted from) a register, may compel the keeper of the register to remove (or enter) his name. The person aggrieved applies (generally by

Stat. 1 & 2 *Vict.* c. 74, which empowers justices in petty sessions to grant a warrant for the eviction of the tenant. (*Woodf. Land. & T.* 783, where other summary modes of procedure are referred to.) A similar remedy is given in the case of premises held at a rack-rent which have been deserted by the tenant. *Stats.* 11 *Geo. II.* c. 19; 57 *Geo. III.* c. 52; *Woodf. Land. & T.* 789. *See* DESERTED PREMISES; DISPOSSESSION; SUMMARY PROCEEDINGS.

summons, motion, or other summary mode, to the court having jurisdiction, and the court makes an order directing the rectification of the register. See the Companies Act, 1862, § 35; Land Part. 171; Land Transfer Act, 1875, § 96. See MANDAMUS.

RECTIFICATION OF SPIRITS, (distinguished from "distillation") 2 Wheat. (U. S.) 258.

RECTIFIER, (in internal revenue act). 3 Ben. (U. S.) 70.

RECTIFIER OF DISTILLED SPIRITS, (defined). 2 Am. L. T. Rep. 23.

RECTIFIER OF SPIRITS, (is not a distiller of spirituous liquors). 1 Pet. (U. S.) C. C. 180.

RECTITUDO.—Right or justice; legal dues; tribute or payment.—*Cowell*.

RECTO, BREVE DE.—A writ of right, which was of so high a nature, that as other writs in real actions were only to recover the possession of the land, &c., in question, this aimed to recover the seisin and the property, and thereby both the rights of possession and property were tried together.—*Cowell*.

There were two species: (1) Writ of right patent, so called because it was sent open, and was the highest writ lying for him who had a fee-simple in the lands or tenements sued for, against the tenant of the freehold at least, and in no other case; this writ was likewise called *breve magnum de recto*. (2) Writ of right close, which was brought where one held lands and tenements by charter in ancient demesne in fee-simple, fee-tail, or for term of life, or in dower, and was disseised. (Co Litt. 158.) Abolished by 3 and 4 Will. IV. c. 27.

RECTO DE ADVOCATIONE ECCLESIAE.—A writ which lay at common law, where a man had right of advowson of a church, and the parson dying, a stranger had presented.—*F. N. B.* 30.

RECTO DE CUSTODIA TERRÆ ET HÆREDIS.—A writ of right of ward of the land and heir. Abolished.

'RECTO DE DOTE.—See DE DOTE, &c.

RECTO DE DOTE UNDE NIHIL HABET.—See DE DOTE, &c.

RECTO DE RATIONABILI PARTE.—See DE RATIONABILI, &c.

RECTO QUANDO (or QUIA) DOMINUS REMISIT CURIAM.—A writ of right, when or because the lord had remitted his court, which lay where lands or tenements in the seignory of any lord were in demand by a writ of right.—*F. N. B.* 16.

RECTO SUR DISCLAIMER.—An abolished writ on disclaimer.

RECTOR.—An officer of the Church of England, having a benefice with cure of souls, i. e. spiritual charge of his parishioners, with the right and duty of celebrating services and

sacraments in the church. He obtains his benefice by ordination, presentation, institution and induction (*q. v.*) He has an exclusive title to all the emoluments of the living, i. e. the parsonage house and glebe, the tithes, &c. (1 Bl. Com. 384 *et seq.*) An impropiator (*q. v.*) is sometimes called a "lay rector." See ADVOWSON; BENEFICE; PROPRIETARY CHAPEL.

RECTOR, (sometimes used for "parson"). 1 Bl. Com. 384; 2 Steph. Com. 677.

RECTOR SINECURE.—One without cure of souls. 2 Steph. Com. (7 edit.) 683; see SINECURE.

RECTORIAL TITHES.—Great, or prebial tithes.

RECTORIAL TITHES, (not synonymous with "great tithes"). 3 Dowl. & Ry. 140.

RECTORY.—A spiritual non-appropriated living, composed of land, tithe, and other obligations of the people, separate or dedicate to God, in any congregation for the service of his church there, and for the maintenance of the governor or minister thereof, to whose charge the same is committed.—*Spel. Gloss.*

RECTORY, (defined). 1 Chit. Gen. Pr. 163.

RECTUM.—Right; also, a trial or accusation.—*Bract.*; *Cowell*.

RECTUM ESSE.—To be right in court.

RECTUM ROGARE.—To ask for right; to petition the judge to do right.

RECTUM, STARE AD.—To stand trial, or abide by the sentence of the court.

RECTUS IN CURIA.—One who stands at the bar of a court, and no accusation is made against him; also, said of an outlaw when he has reversed his outlawry.

Recuperatio, i. e. *ad rem, per injuriam extortam sive detentam, per sententiam judicis restitutio* (Co. Litt. 154 a): Recovery, i. e. restitution by sentence of a judge of a thing wrongfully extorted or detained.

Recuperatio est alicujus rei in causam, alterius adductæ per judicem acquisitio (Co. Litt. 154 a): Recovery is the acquisition, by sentence of a judge, of anything brought into the cause of another.

RECUPERATORES.—In the civil law, judges to whom the prætor referred a question.

Recurrendum est ad extraordinarium quando non valet ordinarium: We must have recourse to what is extraordinary, when what is ordinary fails.

RECUSANTS.—Persons who willfully absent themselves from their parish church, and on whom penalties were imposed by various

statutes passed during the reigns of Elizabeth and James I. 4 Broom & H. Com. 62.

RECUSATIO JUDICIS.—In the civil law, a refusal of, or exception to, a judge upon any suspicion of partiality.

RECUSATIO TESTIS.—In the civil law, rejection of a witness on the ground of incompetency.

RED.—Advice.

-RED-BOOK OF THE EXCHEQUER.—An ancient record wherein are registered the names of those who held lands *per baroniam* in the time of Henry II. Ryley 687.

REDDENDO SINGULA SINGULIS.—A clause in an instrument is said to be read *reddendo singula singulis* ("giving each to each") when one of two provisions in one sentence is appropriated to one of two objects in another sentence, and the other provision is similarly appropriated to the other object. Thus, if a testator makes a will in these terms: "I devise and bequeath all my real and personal property to A," it will be construed *reddendo singula singulis* by applying "devise" to "real property," and "bequeath" to "personal property." See an example in *Thornton v. Thornton*, L. R. 20 Eq. 599.

REDDENDUM.—That which is to be paid or rendered. That clause in a lease which specifies the amount of the rent and the time at which it is payable. (Elph. Conv. 236.) It begins with the words "yielding and paying."

Reddere, nil aliud est quam acceptum restituere; seu, reddere est quasi retro dare, et redditur dicitur a redeundo, quia retro it (Co. Litt. 142): To render is nothing more than to restore that which has been received; or, to render it as it were to give back, and it is called "rendering from returning," because it goes back again.

REDDIDIT SE.—He has rendered himself. Applied to a principal, who renders himself to prison in discharge of his bail.

REDDITARIUM.—A rental of an estate or manor.

REDDITARIUS.—A renter.—*Cowell*.

REDDITION.—A surrendering or restoring; also, a judicial acknowledgment that the thing in demand belongs to the demandant, and not to the person surrendering.—*Cowell*.

REDDITUS SICCUS.—See **REDITUS SICCUS**.

REDEEM — REDEMPTION.—Redeeming, or redemption, is where a person having the right to do so, pays off a mortgage debt or charge upon the property, and thus *buys back* (Latin *redimit*) the property; he thereupon becomes entitled to have it reconveyed to him by the mortgagee or creditor. An action or suit for redemption, is one brought to compel the mortgagee to reconvey the property on payment of the debt and interest. See **RECONVEYANCE**.

REDEEM, (in a statute). 2 Edw. (N. Y.) 138, 146.

REDEEMABLE RIGHTS.—Rights which return to the conveyor or disposer of land, &c., upon payment of the sum for which such rights are granted.

REDELIVERY.—A yielding and delivering back of a thing.

REDEMISE.—A regranting of land demised or leased.

REDEMPTION, (defined). 44 Iowa 212.
—— (distinguished from "repurchase"). 3 Atk. 280.

REDEMPTION, EQUITY OF.—See **EQUITY OF REDEMPTION**.

REDEMPTION OF CERTIFICATES OF DEBT, (stock of a corporation pledged for). 1 Hugh. (U. S.) 17.

REDEMPTION OF LAND-TAX.—The redemption of the land-tax is proved, in England, by the certificate of the commissioners, the receipt of the cashier of the Bank of England, and memorandum of registration.

RED-HANDED.—With the marks of crime fresh on him.

REDHIBITION.—An action allowed by the civil law to a buyer, by which to annul the sale of some movable, and oblige the seller to take it back again, upon the buyer's finding it damaged, or that there was some deceit, &c. Sand. Inst. (5 edit.) 359.

RÉDISSEISIN.—A disseisin made by him who once before was bound and adjudged to have disseised the same person of his lands or tenements.—*F. N. B.* 188; 1 Reeves Hist. Eng. Law 263.

REDITUS ALBI.—White rents, or rents paid in silver. 1 Steph. Com. (7 edit.) 676.

REDITUS ASSISUS.—A set or standing rent.

REDITUS CAPITALES.—Chief rent paid by freeholders to go quit of all other services.

REDITUS NIGRI.—Black mail; rents paid in grain or base money. 1 Steph. Com. (7 edit.) 676.

REDITUS QUIETI.—Quit rents (*q. v.*) 1 Steph. Com. (7 edit.) 676.

REDITUS SICCOUS.—A rent seek, or barren, the owner of which has neither seignory nor reversion, nor any express power of distress reserved to him. See 4 Geo. II. c. 28; 1 Steph. Com. (7 edit.) 676.

REDMANS, or RADMANS.—Men who, by the tenure or custom of their lands, were to ride with or for the lord of the manor, about his business.—*Domest.*

REDOBATOIRES.—Redubbers (*q. v.*)

REDRAFT.—A second bill of exchange.

REDUBBERS.—Persons who bought stolen cloth and turned it into some other color or fashion, that it might not be known again. (3 Inst. 134.)—*Cowell.*

REDUCTIO AD ABSURDUM.—The method of disproving an argument by showing that it leads to an absurd consequence.

REDUCTION.—In the Scotch law, an action for the purpose of setting aside or rendering null and void some deed, will, right, &c.—*Bell Dict.*

REDUCTION EX CAPITE LECTI.—By the law of Scotland the heir in heritage was entitled to reduce all voluntary deeds granted to his prejudice by his predecessor within sixty days preceding the predecessor's death; provided the maker of the deed, at its date, was laboring under the disease of which he died, and did not subsequently go to kirk or market unsupported.—*Bell Dict.* But such reductions have now been abolished by the 34 and 35 Vict. c. 81.

REDUCTION IMPROBATION.—One form of the action of reduction in which falsehood and forgery are alleged against the deed or document sought to be set aside.—*Bell Dict.*

REDUCTION INTO POSSESSION.—

§ 1. In general.—The act of exercising the right conferred by a chose in action, so as to convert it into a chose in possession; thus a debt is reduced into possession by payment.

§ 2. By husband.—The term is chiefly used with reference to the exercise by a husband of the common law right to re-

duce into possession choses in action belonging to his wife; and the question whether he has done so is of importance from the rule that his wife's choses in action do not vest in him, as her other chattels do, unless he has reduced them into possession during the coverture. Thus, if C. owes a debt of \$500 to A., a *feme sole*, and A. marries B., B. has the right at common law to receive the \$500 from C., or to sue him for it, and if he does so, and obtains payment or judgment against C., he will have reduced the chose in action into possession, and the \$500 belongs to him (Leake Cont. 633; Wats. Comp. Eq. 329; Aitchison v. Dixon, L. R. 10 Eq. 589); if, however, B. dies without having enforced his right to the \$500, it survives to A. as if she had never been married. Choses in action falling within this rule include debts, arrears of rent, legacies, residuary personal estate, money in the funds, shares, &c., but not chattels personal which at the time of the marriage were in the possession of third persons. Bright H. & W. 34; Macq. Husb. & W. 47.

§ 3. In order that the act of the husband may operate as a reduction into possession, there must be an intention to that end, coupled with some act giving effect to the intention. (Wats. Comp. Eq. 330; Macq. Husb. & W. 50.) As a general rule, any act by which the property is brought into the exclusive control of the husband, (in his character of husband, and not as trustee, or executor, &c.,) is a reduction into possession. (2 Spence Eq. 478.) Thus, if a debt due to the wife is received by the husband, or he brings an action for the debt in his sole name and recovers judgment (Wms. Ex. 803), the debt is reduced into possession. And although an assignment by the husband of a debt due to the wife does not defeat her right by survivorship, unless the assignee reduces it into possession during the husband's life-time, (Macq. Husb. & W. 55; Prole v. Soady, L. R. 3 Ch. 220; Barlow v. Bishop, 1 East 432,) yet if a bill of exchange or promissory note is made or endorsed to a married woman during coverture, and the husband endorses it to a stranger, (Mason v. Morgan, 2 Ad. & E. 30; Scarpellini v. Atcheson, 7 Q. B. 364; 14 L. J. Q. B. 333; Bright H. & W. 37,) or if he

causes stock belonging to his wife to be transferred into his sole name, this operates as a reduction into possession. But if he transfers the stock into the joint names of himself and his wife, this does not operate as a reduction into possession. (*See Baker v. Hall*, 12 Ves. 497; *Wall v. Tomlinson*, 16 *Id.* 413; *Nicholson v. Drury Buildings Estate Co.*, 7 Ch. D. 48; *Widgery v. Tepper*, 5 Ch. D. 516; *Solicitors' Journal*, 19 and 26 January, 1878.) This doctrine of the common law has been abolished in many of the States.

REDUCTION OF CAPITAL.—By the English Companies Act, 1867, § 9 *et seq.*, any company limited by shares may pass a special resolution to reduce its capital. It must then add the words "and reduced," as the last words of its name. The resolution is inoperative until the company has applied to the court (*e. g.* to the High Court, by petition presented in the Chancery Division,) to confirm the reduction; and the court, if satisfied that the creditors of the company consent to the reduction, or that their claims have been discharged or secured, may make an order confirming the reduction, and fixing the date until which the company must retain the words "and reduced" as part of its name. (*Dan. Ch. Pr.* 1978.) The object of the act was to enable a company which had a larger unpaid-up capital than it required, to relieve the shareholders from the liability to calls; but it was not intended to enable a company to write off a part of its paid-up capital which has been lost, (*In re Ebbw Vale Co.*, 4 Ch. D. 827,) or to return to its shareholders part of its paid-up capital which is not required for its business. But this may now be done under the Companies Act, 1877; and under the Companies Act, 1880, accumulated profits may be returned to shareholders in reduction of paid-up capital.

REDUNDANCY.—Impertinent or foreign matter inserted in a pleading. *See* IRRELEVANT.

RE-ENTRY.—The resuming or retaking that possession which any one has lately foregone.—*Cowell. See* FORFEITURE; PROVISIO; RIGHT OF ENTRY.

RE-ENTRY, (clause of, in a lease). 2 Brod. & B. 473, 501; 1 Moo. & M. 189; 1 Stark. 411.

REEVE.—A steward or bailiff.

RE-EXAMINATION.—*See* EXAMINATION, § 3.

RE-EXAMINATION OF WITNESS, (when allowed). 15 Wend. (N. Y.) 196.

RE-EXCHANGE.—The damages which the holder of a bill of exchange

sustains by its being dishonored in a foreign country where it was made payable. (*Willans v. Ayers*, 3 App. Cas. 146.) "The theory of the transaction is this: A merchant in London indorses a bill for a certain number of Austrian florins, payable at a future date in Vienna. The holder is entitled to receive in Vienna, on the day of the maturity of the bill, a certain number of Austrian florins. Suppose the bill to be dishonored. The holder is now, by the custom of merchants, entitled to immediate and specific redress—by his own act—in this way. He is entitled, being in Vienna, then and there to raise the exact number of Austrian florins, by drawing and negotiating a cross bill, payable at sight, on his indorser in London, for as much English money as will purchase in Vienna the exact number of Austrian florins, at the rate of exchange on the day of dishonor; and to include in the amount of that bill the interest and necessary expenses of the transaction. This cross bill is called in French the *retraite*. The amount for which it is drawn is called in Low-Latin *ricambrium*, in Italian *ricambio*, and in French and English re-exchange. If the indorser pay the cross or re-exchange bill, he has fulfilled his engagement of indemnity. If not, the holder of the original bill may sue him on it, and will be entitled to recover in that action the amount of the *retraite* or cross bill, with the interest and expenses thereon. The amount of the verdict will thus be an exact indemnity for the non-payment of the Austrian florins in Vienna on the day of the maturity of the original bill. According to English practice, the *retraite* or re-exchange bill is now seldom drawn, but the right of the holder to draw it is settled by the law merchant of all nations; and it is only by a reference to this supposed bill that the re-exchange, in other words, the true damages in an action on the original bill, can be scientifically understood and computed." (*Byles Bills* 412; *In re General South American Co.*, 7 Ch. D. 637.) As to the legality of a custom to allow a fixed percentage in lieu of re-exchange, *see Willans v. Ayers*, 3 App. Cas. 138.

RE-EXTENT.—A second execution by extent in respect of the same debt. *Tidd Pr.* 1087. *See* EXTENT.

REFARE.—To bereave, take away, rob.—*Cowell.*

REFECTION.—In the civil law, reparation of a building.

REFER—REFERENCE.—

§ 1. To refer a question is to have it decided by a person nominated for the purpose, in lieu of the ordinary procedure by action, trial or other judicial proceedings. The person to whom the question is referred is sometimes called the "referee," and the proceedings before him constitute the reference; these proceedings to a great extent resemble those on an ordinary trial, except that they are private; witnesses are examined, and the referee is addressed on behalf of each of the parties, and he makes an award or report containing his decision. *See* AWARD; REPORT, § 1.

References are of various kinds—

§ 2. **Reference to arbitration.**—When two persons agree to decide a dispute by a reference without any resort to litigation, or when, as is done in some jurisdictions, an action is referred to arbitrators by order of the court, this is generally termed a "reference to arbitration." (*See* ARBITRATION.) The decision of the arbitrator is on the whole case, and is final. *Cruikshank v Floating Swimming Bath Co.*, 1 C. P. D. 260.

§ 3. Under the English Judicature Acts, and the several codes of procedure, when an action has been brought, the court may refer any question arising in the action to a referee for inquiry and report, and may adopt the referee's report, so as to give it the force of a judgment. *See* INQUIRY.

§ 4. The court also has power, with the consent of the parties, and in certain cases whether they consent or not (*e. g.* when complicated accounts are involved), to order any question of fact or issue arising in an action to be tried before a referee, and may even allow the whole action to be tried before a referee, unless one of the parties is entitled, and wishes, to have the action tried before a jury. *See* TRIAL.

§ 5. **Reference to chambers.**—In the practice of the English Chancery Division, questions of detail arising in an action or suit are frequently "referred to chambers," *i. e.* the judge's chief clerk is directed to inquire into them and certify the result to the court. (*See* CERTIFICATE, p. 185, n. (3); INQUIRY, § 2.) Sometimes a petition, instead of being disposed of in court,

is referred to chambers to be dealt with by the judge in private; *e. g.* a petition for leave to marry a ward of court. *Dan. Ch. Pr.* 1210.

§ 6. **Reference to master.**—Similarly, in the Queen's Bench Division, when damages have to be assessed under an interlocutory judgment, (*see* JUDGMENT, § 5,) and the amount is substantially a matter of calculation, the court may direct it to be ascertained by one of the masters, who has the same powers as if he were acting under a writ of inquiry (*q. v.*) Such a reference (which is cheaper and quicker than a writ of inquiry) is generally ordered when the damages consist of interest, calls on shares, a sum of foreign money, &c. *Arch. Pr.* 803; *C. L. P. Act*, 1852, § 94.

§ 7. Under the Lands Clauses Consolidation Act, 1845, the Railways Clauses Consolidation Act, the Agricultural Holdings Act, 1875, and similar acts, questions of compensation are generally settled by a reference as provided by the acts. *See* COMPENSATION.

§ 8. **Privy Council.**—Every appeal to the Privy Council is theoretically supposed to be first submitted to the queen in council, and then referred by her to the Judicial Committee, who report to her their opinion. But now a general Order in Council is made every year as a matter of course, directing all appeals presented within the next twelve months to be referred to the Judicial Committee. (*Macph. Jud. Com.* 83.) Some matters, however, are not heard by the Judicial Committee without a special reference or direction by the queen in council, *e. g.* a question of amotion or suspension from office. *Id.* 62. *See* AMOTION, § 2.

REFEREE.—

§ 1. A person to whom a question is referred for his decision or opinion. (*See* REFER.) In ordinary cases of references out of court, the person to whom a question is referred is called an "arbitrator," the name "referee" being generally used in cases where the court refers any question arising in a cause or matter to a referee for inquiry and report. *See* REFER, § 3 *et seq.*; TRIAL.

§ 2. **Official—Special.**—An official referee, in English practice, is a paid and permanent officer of the court; the business referred to the official referees is distributed among them in rotation, unless a reference is directed to a particular referee. (*Jud. Act*, 1873, §§ 83, 56 *et seq.*; *Rules of Court*, xxxvi. 29 *et seq.* (Order as to fees to be paid to official referees.)) A special referee is one who is agreed on between the parties and remunerated by them, the amount being determined by the court. *Jud. Act*, 1873, § 57.

§ 3. **Private bills.**—In English parliamentary practice, referees on private bills are persons who were originally appointed by the House of Commons to report on engineering questions arising on private bills, but now they only decide questions of *locus standi* (*q. v.*) *May Parl. Pr.* 755, 761.

REFERENCE IN CASE OF NEED.—When a person draws or indorses a bill of exchange, he sometimes adds the name of a person to whom it may be presented "in case of need," *i. e.* in case it is dishonored by the original drawee or acceptor. Byles Bills 261; *In re Leeds Banking Company*, L. R. 1 Eq. 1. See ACCEPTANCE, § 5.

REFERENCE TO RECORD.—Under the English practice, when an action is commenced, an entry of it is made in the cause-book according to the year, the initial letter of the surname of the first plaintiff, and the place of the action, in numerical order among those commenced in the same year, (Rules of Court, v. 8, xix. 7;) *e. g.* "1876, A. 26;" and all subsequent documents in the action (such as pleadings and affidavits) bear this mark, which is called the "reference to the record." See CAUSE-BOOKS; RECORD; TITLE.

REFERENDARY.—One to whose decision anything is referred.—*Cowell*; *Spel. Gloss.*

REFERENDUM.—A note addressed by an ambassador to his own government touching a proposition, as to which he is without power and instructions.

REFERRED, (defined). 22 Me. 34.

REFORM.—To correct; to make anew; to rectify.

§ 1. **In American law.**—When, by accident or mistake, an instrument does not express the intent of the parties, an equitable suit may be maintained for its "reformation," *i. e.* to procure a decree establishing it according to the actual intent, and the justice of the case in view of that intent. The differences in meaning between "reform" and "amend" seem to be two. One is, that reform presents more strongly the ideas of an intention or standard which was not expressed or reached by the original instrument, and of a making the instrument anew (forming it again), to conform it to the true design; while "amend" may suggest the idea of improving the instrument from and beyond its original inception; not stigmatizing it as defective at the outset so much as implying that it is capable of improvement. Again, "amend" is more appropriate to judicial proceedings; "reform," to instruments *inter partes*.—*Abbott*.

§ 2. **In English Law**, to reform an instrument is to rectify it. See RECTIFICATION.

The Reform Act is the Stat. 2 Will. IV. c. 45.

REFORMATION.—The great change effected in the reign of Henry VIII. (as regards its political aspects) and in the reigns of Edward VI. and Elizabeth (as regards religious aspects) is so called.

REFORMATORY.—See EDUCATION ACTS.

REFRESHER.—A fee paid to a counsel on the trial of an action in addition to the fee originally paid to him with his brief. In the practice of the Queen's Bench Division, a refresher is usually paid to each counsel for every day the case lasts beyond the first day. Under the old Chancery practice (where the evidence was seldom taken *voir voce*), the fee marked on the brief was made proportionate to the time the case was expected to last, and refreshers were therefore not generally required or allowed on taxation. The present practice is somewhat unsettled, but the correct rule seems to be that where the evidence is taken by affidavit or depositions, the fee on the brief should cover the whole time the case is likely to occupy; and where the evidence is to be given *voir voce*, the fee should only cover the first day, and be supplemented by refreshers if the case lasts longer. See *Smith v. Buller*, L. R. 19 Eq. 482; *Harrison v. Wearing*, 11 Ch. D. 206.

REFRESHING MEMORY.—A witness is in some cases allowed to refresh his memory while under examination, by referring to a document which is not itself admissible as evidence. Thus, a witness who has made a memorandum of a transaction may in many cases use it to refresh his memory. (Best Ev. 313.) So a merchant may use his account books to refresh his memory when giving evidence in an action for goods supplied. *Id.* 638.

REFRESHMENT, RESORT AND ENTERTAINMENT, (in liquor act). 1 Ex. D. 385.

REFINED SUGAR, (in a statute). 7 Pet. (U. S.) 404, 409; 1 Pet. (U. S.) C. 2. 113.

REFLECTING, (as applied to libel and slander, defined). 14 East 153, 154.

REFUND.—To pay back money which has been received, but which cannot be retained in law, or good conscience.

REFUSAL.—Where one has, by law, a right and power of having or doing something of advantage, and he declines it.

REFUSAL, (in statute relative to bills of exchange). 79 N. Y. 627.

— (by an executor to take the oath, is a refusal of his office). 1 Lal. Raym. 803.

REFUSAL TO DELIVER GOODS, (what is). 5 Conn. 76.

REFUSAL TO PAY, (what is). 8 Cow. (N. Y.) 96.

REFUSE, (defined). 1 Ry. & M. 138.

— (in a deed of assignment). 5 Dowl. & Ry. 56.

— (in a statute). 3 Rawle (Pa.) 398.

— (in a will). 6 Halst. (N. J.) 251.

REFUSE OR NEGLECT TO ACCOUNT, (in a statute). 1 Greenl. (Me.) 139.

REFUSE WOOD, (in a statute). 72 Me. 465.

REFUSING, (distinguished from "failing"). 9 Wheat. (U. S.) 344.

REFUTANTIA.—In old records, an acknowledgment of renouncing all future claim.—*Cowell*.

REGAL FISH.—Whales and sturgeons. 2 Steph. Com. (7 edit.) 19 n., 448, 539, 540.

REGALE EPISCOPORUM. — The temporal rights and privileges of a bishop.—*Cowell*.

REGALIA seems to be an abbreviation of *jura regalia*, royal rights, or those rights which a king has by virtue of his prerogative. Hence owners of counties palatine were formerly said to have *jura regalia* in their counties as fully as the king in his palace. 1 Bl. Com. 117. See COUNTY PALATINE.

§ 2. Some writers divide the royal prerogative into *majora* and *minora regalia*, the former including the regal dignity and power, the latter the revenue or fiscal prerogatives of the crown. 1 Bl. Com. 117.

REGALIA FACERE.—To do homage or fealty to the sovereign by a bishop when he is invested with the regalia.

REGALITY.—A territorial jurisdiction in Scotland conferred by the crown. The lands were said to be given *in liberam regalitatem*, and the persons receiving the right were termed "lords of regality."—*Bell Dict.*

REGARD OF THE FOREST.—The oversight or inspection of it, or the office and province of the regarder, who is to go through the whole forest, and every bailiwick in it, before the holding of the sessions of the forest, or justice-sent, to see and inquire after trespassers, and for the survey of dogs.—*Manw.*

REGARDANT seems originally to have had the same meaning as appendant. (Co. Litt. 120 b.) In Littleton's time, however, it was only applied to villeins (*q. v.*) (Litt. § 184; Britt. 152 a, 185 a. See Coke's attempt to explain the etymology of the word, Co. Litt. 120 a.) A villein regardant was *regardant* to the manor in respect that he was like a chattel annexed thereto, and because he was charged with doing all base services within the manor, and with seeing that it was freed from all things that might annoy it.

REGARDER OF A FOREST.—An ancient officer of the forest, whose duty it was to take a view of the forest hunts, and to inquire concerning trespasses, offenses, &c.—*Manw.*

REGARDS, COURT OF.—See COURT OF REGARDS.

REGE INCONSULTO.—A writ issued from the sovereign to the judges, not to proceed in a cause which may prejudice the crown, until advised. Jenk. Cent. 97.

REGENCY.—A temporary monarchy, existing during the continuance of some disability of the lawful monarch, such as absence, sickness, minority, &c.

REGENT.—One invested with vicarious royalty. See 3 and 4 Vict. c. 52.

REGEST.—A register.—*Milton*.

Regia dignitas est indivisibilis, et quælibet alia derivativa dignitas est similiter indivisibilis (4 Inst. 243): The kingly power is indivisible, and every other derivative power is similarly indivisible.

REGIAM MAJESTATEM. — A collection of the ancient laws of Scotland. It is said to have been compiled by order of David I., King of Scotland, who reigned from A. D. 1124 to 1153. Hale C. L. 271.

REGICIDE.—The murder of a sovereign; also the person who commits such murder.

REGIME.—In the French law, a system of rules or regulations.

REGIME DOTAL.—In the French law, the *dot*, being the property which the wife brings to the husband as her contribution to the support of the burdens of the marriage, and which may either extend as well to future as to present property, or be expressly confined to the present property of the wife, is subject to certain regulations which are summarized in the phrase *régime dotal*. The husband has the entire administration during the marriage; but as a rule where the *dot* consists of immovables, neither the husband nor the wife, nor both of them together, can either sell or mortgage it. The *dot* is returnable upon the dissolution of the marriage, whether by death or otherwise. (See Dos.)—*Brown*.

REGIME EN COMMUNAUTE.—In the French law, the community of interests between husband and wife which arises upon their marriage. It is either (1) legal or (2) conventional, the former existing in the absence of any agreement properly so called and arising from a mere declaration of community, the latter arising from an agreement properly so called. Legal community extends to all the movable and immovable property of both parties (and the profits thereof) at the time of and during the marriage, and also to all the debts with which either spouse is burdened at the date of the marriage, or which the husband or the wife (with his consent) contracts during the marriage. Under such a community, the husband has the sole management and disposal of the property, but

he cannot give it away for nothing, unless it should be for the advancement of the children of the marriage. This community is destroyed by a judicial separation *de corps et de biens*, and the wife recovers the free administration of her goods. Conventional community may be as diverse as the parties choose by their conventions to make it, these conventions most commonly regulating the amount of property which shall be held in common, excluding the after-acquired property from the community, or making other such restrictive regulations.—*Brown*.

REGINA.—The queen (*q. v.*)

REGIO ASSENSU.—A writ whereby the sovereign gives his assent to the election of a bishop.—*Reg. Orig.* 294.

REGISTER—REGISTRAR—REGISTRATION—REGISTRY.—

§ 1. A register is a book in which state-

ments or memoranda as to certain facts are entered to serve as memorials or evidence. Some registers are public, and others, such as the registers of shareholders, mortgages, &c., required to be kept by joint-stock companies and private corporations, are private. The place or office where a public register is kept is called a "registry," the act or system of registering is called "registration," and the officer who keeps the register is called a "registrar," or "register." In the city of New York, the register of deeds is an officer whose duty it is to receive and record deeds, mortgages, and other instruments, and to preserve such records. In Pennsylvania, a register is an officer charged with probate of wills.*

*The following are the principal public registries and registrars in England:

Admiralty.—The admiralty registrar of the Probate, Divorce and Admiralty Division of the High Court, performs, in the admiralty business of the division, functions corresponding to those discharged by the masters of the Queen's Bench Division. (*See MASTERS.*) He also hears certain motions, and keeps account of all money paid into and out of court. Second Rep. Legal Dep. Comm. (1874) 86. *See REGISTRAR AND MERCHANTS.*

Bankruptcy.—The registrars of the London Court of Bankruptcy perform duties somewhat similar to those of the masters of the Queen's Bench Division and the Chancery chief clerks; but the chief judge may also delegate to them any of the powers vested in him, except the power to commit for contempt; and the registrars are *ex officio* trustees in the absence of specially appointed trustees. (*See TRUSTEE.*) In the office of the chief or senior registrar all bankruptcy petitions are filed, writs of execution issued, and other administrative business transacted. He also keeps the roll of the solicitors practicing in the London Bankruptcy Court. (Robs. Bankr. 38 *et seq.*; Rep. Legal Dep. Comm. 72; Bankr. Rules (1870) 209 *et seq.*) The registrar of appeals receives notices of appeal, and appeal deposits, &c., (Bankr. Rules (1870) 143, 145,) and attends the Court of Appeal in bankruptcy. Bankr. Rules (1870) 212.

Bills of sale.—Bills of sale under the Bills of Sale Act, 1878, are registered in the central office (*q. v.*), and the masters of the Supreme Court, acting jointly or severally, are the registrars. Bills of Sale Act, 1878, § 13; Jud. Act, 1879, § 12.

Births, deaths and marriages.—Under Stats. 6 and 7 Will. IV. c. 85, 86; 7 Will. IV. and 1 Vict. c. 22; 21 and 22 Vict. c. 25; 37 and 38 Vict. c. 88; 42 and 43 Vict. c. 8, every poor law union or parish is divided into registration districts, and whenever a birth or death occurs in England the duty is imposed on certain persons (namely, the near relatives, the persons present

at the birth or death, and the occupier of the house where it occurred,) to give particulars of the birth or death to the registrar of the district within a certain time. He also keeps a register of all marriages solemnized in the district. (*See MARRIAGE ACTS.*) Each parish or union has a superintendent registrar. Four times a year copies of the entries in every local register are transmitted to the registrar-general at Somerset house, where a general register is kept. All these registers are open to public inspection, and certified copies of any entries may be obtained. 3 Steph. Com. 231 *et seq.*; *see, also*, Burial Laws Amendment Act, 1880, § 10.

Building and Friendly Societies.—The registrar of Building, Friendly, Industrial and Provident Societies is an official whose duty it is to register societies which comply with the acts of parliament relating to them, especially with reference to the provisions contained in their rules. He also has power to award the dissolution of a friendly society and the distribution of its funds. *See Friendly Societies Act, 1875, §§ 10, 25; Ju.* 1876.

Chancery.—The duties of a registrar of the Chancery Division are to attend in court and take note of the judgments or orders there made, and subsequently to draw them up in chambers. (Rep. Legal Dep. Comm. 48; Haynes Eq. 54; *see MINUTES; PARS; SETTLE.*) He also issues certificates of sale and transfer. (*See CERTIFICATE*, p. 187, *v.* (17).) Conditional appearances are entered with the registrars. *See APPEARANCE*, § 5.

Charges.—As to the registration of charges under the Land Transfer Act, *see CHARGE*, § 6. Rent-charges created under the Improvement of Land Acts (*q. v.*) are also registered in the land registry. Improvement of Land Act, 1864, § 56.

County Court.—County court registrars perform the same duties in county courts as the masters, registrars and chief clerks discharge in the various divisions of the High Court, as well as some others; they issue summonses, &c., attend the sittings of the courts, tax costs, enter up judgments, &c. Poll. C. C. Pr. 11.

Designs.—*See REGISTRATION OF DESIGNS.*

§ 2. Register of ships.—A register kept by the collectors of customs, in which the names, ownership and other facts relative to merchant vessels are required by law to be entered. This register is evidence of the nationality and privileges of an American ship. The certificate of such registration, given by the collector to the owner or master of the ship, is also called the "ship's register."

REGISTER OF WRITS.—An old book in which new forms of original writs were entered. The register of writs is said to be the oldest book in the law, a character which may, in a great measure, be true, but should not be allowed without some consideration. It is not more certain than extraordinary that the forms of writs were settled in their substance and language very nearly in the manner in which they were drawn ever after. However, this uniform-

ity was not so exact as that the writs published and used in the reign of Henry VIII. were all of them identically the same with those used at the first origin of this invention, in the reign of Henry II. It is not to be wondered that there should be a difference in these forms at their infancy, and at this advanced state of our law, but it is remarkable that the difference should be so small. 4 Reeves Hist. Eng. Law 426; Co. Litt. 16 b, 37 b, 159 a.

REGISTER OF WRITS OF EXECUTION.—By 23 and 24 Vict. c. 38, writs of execution of judgments must be registered in order to affect land; and see 27 and 28 Vict. c. 112, § 3.

REGISTRAR and MERCHANTS.—In English Admiralty actions, the court itself does not enter into details relating to the assessment of damages or matters of account, and whenever in the course of a cause it becomes necessary that the court should be informed upon such questions, it is usual to direct a

District Registries.—See that title.

Joint Stock Companies.—See COMPANIES ACTS.

Judgments.—Formerly a judgment for a sum of money bound the land of the defendant, provided the judgment was registered in an office established for that purpose, which now forms part of the central office (*q. v.*) Although no judgment entered up after the 29th of July, 1864, affects any land until it has been actually delivered in execution, it is still necessary to register, in the name of the debtor, the writ of execution under which the land is delivered. See JUDGMENT, § 16. See Jud. Act, 1879, § 14.

Land Registries.—See that title.

Lunacy.—The registrar in lunacy is an officer of the lord chancellor and judges having jurisdiction in lunacy; all petitions in lunacy (including petitions for inquiry into the state of mind of alleged lunatics) are filed in his office, and he draws up the orders made thereon, whether on affidavits only or in court. Reports and certificates made by the masters in lunacy are also filed in his office, and the application of small properties to the maintenance of lunatics under the Lunacy Regulation Act, 1862, is entirely conducted in the registrar's office, and not in the master's, as in ordinary cases. Second Rep. Legal Dep. Comm. (1874), 66; Pope Lun. 34, 36; Lunacy Reg. Act, 1853, § 10 *et seq.*

Privy Council.—The Privy Council registrar performs for the Judicial Committee of the Privy Council the same functions as those discharged by the masters of the Queen's Bench Division. Second Rep. Legal Dep. Comm. 90. See MASTERS.

Probate and Divorce.—The registrars of the old Probate and Divorce Courts, now transferred to the Probate, Divorce and Admiralty Division of the High Court, are of two kinds—the four registrars of the principal registry, and the district registrars. The principal registry is in London, and forms the office for the transaction of probate business. It consists of four registrars, of whom one attends the court or judge when sitting, and takes down the decrees or orders pronounced; the others attend to the

administrative business, *i. e.* the supervision of the clerks of seats (*q. v.*), the taxation of costs, &c. They also act as the registrars of the court when sitting in divorce matters. (Second Rep. Legal Dep. Comm. 78.) The district registries are situated at various places throughout the country; each has a district registrar. The business of these registries consists in granting probate and letters of administration in common form where the testator or intestate had a fixed place of abode within the district. *Id.* 82; Court of Probate Act, 1857, § 46.

Seamen.—A register of all persons who serve in ships subject to the provisions of the Merchant Shipping Act, 1854, is kept in the port of London, and is made up from the lists and papers transmitted to the registrar by the masters of ships in accordance with the act. Maud & P. Mer. Sh. 137; M. S. Act, 1854, § 271.

Ships.—Every British ship (with certain exceptions) must be registered either under the Registration or Registry Acts (from 12 Car. II. c. 18 to 12 and 13 Vict. c. 29), or under the Merchant Shipping Acts, 1854-1862. There are a certain number of ports in the United Kingdom and the British possessions and colonies, at which registries for the registration of ships are kept; in the United Kingdom the principal officer of customs at the port is the registrar. The port at which a ship is registered for the time being is called her "port of registry." All changes of ownership in a ship (*e. g.* by sale, mortgage, death, bankruptcy) are registered. Sm. Merc. Law 177 *et seq.*; Maud & P. Mer. Sh. 2 *et seq.* See BILL OF SALE, § 2; MANAGING OWNER, § 2; MORTGAGE, § 17.

Solicitors.—The registrar of solicitors has for his duties to keep an alphabetical list of solicitors and to issue certificates for practice. The incorporated law society is the registrar. Solicitors Act, 1843, § 21; Act of 1877, § 16.

Voters.—As to the registration of voters in parliamentary boroughs, see 2 Will. IV. c. 45; 6 and 7 Vict. c. 18; 28 and 29 Vict. c. 36; 30 and 31 Vict. c. 102; 41 and 42 Vict. c. 26; 2 Steph. Com. 354, and REVISING BARRISTER.

reference to the registrar, assisted by merchants (Wms. & B. Adm. 275), usually two in number. After hearing the evidence, the registrar draws up his report. If either party objects to it, he must file a notice of objection. The objection is argued either on motion or on "petition in objection;" if it is sustained or held to be valid the report is overruled; otherwise it is confirmed. *Id.* 283.

REGISTRAR-GENERAL.—An officer appointed by the crown under the great seal, to whom, subject to such regulations as shall be made by a principal secretary of state, the general superintendence of the whole system of registration of births, deaths and marriages is entrusted. 6 and 7 Will. IV. c. 86, §§ 2, 5; 3 Steph. Com. (7 edit.) 234.

REGISTRATION OF DESIGNS.—By the Stats. 5 and 6 Vict. c. 100; 6 and 7 Vict. c. 65; 13 and 14 Vict. c. 104; 21 and 22 Vict. c. 70, and 24 and 25 Vict. c. 73, provision is made for the registration of designs for the manufacture or ornament of certain articles, such as metal works, paper-hangings, textile fabrics, &c. The registry is now under the control of the Commissioners of Patents. (38 and 39 Vict. c. 23.) This and the other acts are called the "Copyright of Designs Acts;" but the application of the term "copyright" to manufactures is inaccurate. Registration gives the right to the exclusive use of the design for a number of years, varying with the nature of the article to which it is to be applied. Shortt Copyr. 602 *et seq.* See COPYRIGHT, § 4; PATENT FOR DESIGN; TRADEMARK.

REGISTRUM BREVIUM.—The register of writs (*q. v.*)

REGISTRY, (defined). 2 Black (U. S.) 17.

REGISTRY LAWS.—The recording acts (*q. v.*)

REGIUS PROFESSOR.—A royal professor, or reader of lectures founded in the universities by the king. Henry VIII. founded in each of the universities five professorships, viz., of Divinity, Greek, Hebrew, Law, and Physic.

REGNAL YEARS.—Acts of parliament being generally referred to or designated by the year of the reign in which they were passed, the following table will furnish a guide to the actual date A. D. of any particular act—

Sovereigns.	Commencement of Reign.	Length of Reign.
William I.....	October 14, 1066	21
William II.....	September 26, 1087	13
Henry I.....	August 5, 1100.....	36
Stephen.....	December 26, 1135.....	19
Henry II.....	December 19, 1154.....	35

*Although Charles II. did not ascend the throne until the 29th of May, 1660, his regnal years were computed from the death of Charles

Sovereigns.	Commencement of Reign.	Length of Reign.
Richard I.....	September 23, 1189.	10
John.....	May 27, 1199	18
Henry III.....	October 28, 1216	57
Edward I.....	November 20, 1272	35
Edward II.....	July 8, 1307.....	20
Edward III.....	January 25, 1328.....	51
Richard II.....	June 22, 1377.....	23
Henry IV.....	September 30, 1399....	14
Henry V.....	March 21, 1413.	10
Henry VI.....	September 1, 1422.	39
Edward IV.....	March 4, 1461	23
Edward V.....	April 9, 1483	
Richard III.....	June 26, 1483.	3
Henry VII.....	August 22, 1485.....	24
Henry VIII.....	April 22, 1509	38
Edward VI.....	January 28, 1547.....	7
Mary.....	July 6, 1553	6
Elizabeth.....	November 17, 1558.....	45
James I.....	March 24, 1603.....	23
Charles I.....	March 27, 1625.....	24
The Commonwealth.....	January 30, 1649.....	11
Charles II*.....	May 29, 1660.....	37
James II.....	February 6, 1685.....	4
William and Mary.....	February 13, 1689.....	14
Anne.....	March 8, 1702	13
George I.....	August 1, 1714.....	13
George II.....	June 11, 1727	34
George III.....	October 25, 1760	60
George IV.....	January 29, 1820.....	11
William IV.....	June 26, 1830.....	7
Victoria.....	June 20, 1837.....	

The year of any particular act may be approximately ascertained by adding to the year of the reign in which it was passed the number of years of the Christian era which had elapsed at the beginning of such reign.

REGNANT.—Reigning, having regal authority. See QUEEN; and 2 Steph. Com. (7 edit.) 475.

REGNI POPULI.—A name given to the people of Surrey and Sussex, and on the sea-coasts of Hampshire.—*Blount.*

REGNUM ECCLESIASTICUM.—The ecclesiastical kingdom. 2 Hale P. C. 324.

Regnum non est divisibile (Co. Litt. 165): The kingdom is not divisible.

RE-GRANT.—In the English law of real property, when, after a person has made a grant, the property granted comes back to him (*e. g.* by escheat or forfeiture) and he grants it again, he is said to re-grant it. The phrase is chiefly used in the law of copyholds. Thus, before the Fines and Recoveries Act, one mode of barring an entail in copyholds was a preconcerted forfeiture of the lands by the tenant, followed by a re-grant from the lord to him in fee-simple. (Wms. Real Prop. 363. See ESTATE TAIL, § 7.)

I., January 30th, 1640, so that the year of his restoration is styled the twelfth of his reign.

As to re-grants in the sense of voluntary grants, see GRANT, § 3.

REGRATING.—The offense of buying corn, &c., in any market and selling it again in the same place, so as to raise the price. It was abolished by Stat. 7 and 8 Vict. c. 24. 4 Steph. Com. 266. See ENGROSSING, § 3; FORESTALL, § 2.

REGRESS is used principally in the phrase "free entry, egress and regress" (*q. v.*), but it is also used to signify the re-entry of a person who has been dis-seised of land. Co. Litt. 318b. See RIGHT OF ENTRY.

REGRESS, LETTERS OF.—They were granted by the superior of lands mortgaged to the wadsettor or mortgagor. Their object was this: By the wadset or mortgage, the mortgagor was completely divested, and when he redeemed, he appeared to claim an entry from the superior as a stranger, and the superior was no more bound to receive the mortgagor than he would have been forced to receive any third party; to remedy this, letters of regress were granted by the superior under which he became bound to re-admit the wadsettor at any time when he should demand entry.—*Bell Dict.* See 20 Geo. II. c. 50.

Regula est, juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere (Cod. 1, 18, 10): It is a rule, every one is prejudiced by his ignorance of law but not by his ignorance of fact.

REGULÆ GENERALES.—General rules, which the courts promulgate from time to time for the regulation of their practice.

REGULAR, (distinguished from "special"). 4 How. (N. Y.) Pr. 83; 72 N. C. 155, 163.
— (synonymous with "general"). 45 Mo. 45.

REGULAR CLERGY.—The monks, who lived *secundum regulas* of their respective houses or societies. 2 Steph. Com. (7 edit.) 681 n.

REGULAR COURSE OF BUSINESS, (what is). 37 Conn. 205; 9 Am. Rep. 308.

REGULAR DEPOSIT.—A strict or special deposit; a deposit which must be returned *in specie*, *i. e.* the thing deposited must be returned. See DEPOSIT, § 1.

REGULAR ELECTION, (synonymous with "general election"). 45 Mo. 45.

REGULAR MEETING, (a majority is necessary to constitute). 7 Cow. (N. Y.) 402.

REGULAR PHYSICIAN, (who is). 35 Conn. 577, 581.

REGULAR SESSION, (in a statute). 59 Me. 80; 60 Id. 535.

REGULAR STATION, (on a railroad). 43 Ill. 364.

Regulariter non valet pactum de re mea non alienanda (Co. Litt. 223): It is a rule that a compact, not to alienate my property, is not binding.

REGULARLY EMPLOYED, (in a statute). 127 Mass. 98.

REGULARLY ENGAGED, (when vessel is, in foreign commerce). 62 How. (N. Y.) Pr. 68.

REGULARLY GIVEN IN FOR TAXES, (in a statute). 45 Ga. 370, 383.

REGULARS.—Those who profess and follow a certain rule of life (*regula*), belonging to a religious order, and observe the three approved vows of poverty, chastity, and obedience.

REGULATE, (in city charter). 25 Ind. 283.

— (in license act). 48 Ind. 306.

— (in a statute). 88 Ill. 221; 17 Wend. (N. Y.) 9; 6 Barn. & C. 23; 9 Dowl. & Ry. 7.

REGULATE AND LICENSE, (in a statute). 25 Iowa 440, 444.

REGULATE BAWDY HOUSES, (in a statute). 54 Mo. 17.

REGULATE COMMERCE, (power to, vested in congress of the United States). Hopk. (N. Y.) 149.

— (in constitution of the United States). 12 Pet. (U. S.) 72; 9 Wheat. (U. S.) 1; 13 Serg. & R. (Pa.) 409; 2 Am. L. J. 273.

REGULATE THE SALE OF INTOXICATING LIQUORS, (in title of a statute). 48 Ind. 306.

REGULATION OF AN EXECUTIVE DEPARTMENT, (defined). 3 Ct. of Cl. 33.

REGULATION OF COMMERCE, (what is not). 11 Pet. (U. S.) 102.

REHABERE FACIAS SEISINAM.

—A judicial writ which lay when the sheriff in the *habere facias seisinam* had delivered more than he ought. Reg. Jud. 13.

REHABILITATE.—To restore a delinquent to former rank, privilege or right; to qualify again; to restore a forfeited right.

REHEARING is where a cause or matter which has been already adjudicated upon is re-argued and a second judgment pronounced. The term is derived from practice of courts of chancery, in which an appeal from a vice chancellor to the chancellor is looked upon as a rehearing, because they were the delegates of the chancellor and members of the same court.

§ 2. By the English Judicature Acts every appeal to the Court of Appeal is to be by way of rehearing. (Rules of Court lviii. 2.) This means that the Court of Appeal is in the same position as if the rehearing were the original hearing, and hence it may receive further evidence in addition to that before the court below (*Id.* 5), and it may review the whole case and not merely the points as to which the appeal is

brought. *Purnell v. Great W. Rail. Co.*, 1 Q. B. D. 640. See *APPEAL*, p. 64 n.; *ERROR*; *RE-ARGUMENT*.

REHEARING, (defined). 3 Bl. Com. 453; 3 Steph. Com. 603.

—— (technically speaking). 52 Barb. (N. Y.) 637, 651.

REHEARSAL OF A DEED, (does not act as an estoppel). 13 Wend. (N. Y.) 205.

Rei turpis nullum mandatum est (D. 17, 1, 6, 3): The mandate [bailment] of an immoral thing is void.

REI INTERVENTUS.—In the Scotch law, the part performance of a contract. 2 Bell App. Cas. 115.

REIF.—A robbery.—*Cowell*.

RE-IMBURSE, (defined). 83 Pa. St. 257, 264.

RE-INSURANCE is where an insurer procures the whole or part of the sum which he has insured (*i. e.* contracted to pay in case of loss, death, &c.,) to be insured again to him by another person. This is commonly done in the case of marine insurance, either when the insurer is a company, because the sum which they have insured is larger than the constitution of the company allows, (*Great Western Insurance Co. v. Cunniffe*, L. R. 9 Ch. 531 n.,) or for some similar reason; or, in the case of an underwriter, because subsequent events make the risk greater than he originally intended. (*Emer. Ins. 6.*) There is no privity of contract between the re-insurer and the original insured; in this respect re-insurance differs from double insurance (*q. v.*)

§ 2. Formerly, in England, by 19 Geo. II. c. 37, § 4, re-insurance was prohibited except in certain cases (*Macle & P. Mer. Sh. 346*); but this provision was repealed by 30 and 31 Vict. c. 23. *Mackenzie v. Whitworth*, L. R. 10 Ex. 142. See *INSURANCE*.

RE-INSURANCE, (is a valid contract). 17 Wend. (N. Y.) 359.

RE-ISSUABLE NOTES.—Notes payable to the bearer on demand, for any sum not exceeding £100, and not less than £5, duly stamped according to the 55 Geo. III. c. 184, may be re-issued after payment as often as may be thought necessary without a new stamp, provided an annual license for that purpose be taken out. *Byles Bills* (11 edit.) 105, 169.

REJOIN—REJOINDER.—In common law pleading, the rejoinder is the pleading which follows the replication

(*q. v.*) Under the modern English practice, unless it is a simple joinder of issue (*q. v.*) a rejoinder cannot be delivered without leave of the court or a judge. (*Rules of Court*, xxiv. 2; *Sheward v. Lord Lonsdale*, 5 C. P. D. 47. As to rejoinders at common law and in equity under the old practice, see *Sm. Ac.* (11 edit.) 92, 101; *Mittf. Pl.* 321.) And in the code States the rejoinder is no longer in use, the reply (*q. v.*) being the last pleading in the action.

REJOINING GRATIS.—Rejoining voluntarily, or without being required to do so by a rule to rejoin. When a defendant was under terms to rejoin gratis, he had to deliver a rejoinder, without putting the plaintiff to the necessity and expense of obtaining a rule to rejoin. *Atkins v. Anderson*, 10 Mees. & W. 12; *Lush Pr.* 396.

RELATE—RELATION.—The doctrine of relation is that by which an act is made to produce the same effect as if it had occurred at an earlier time. Thus, an adjudication in bankruptcy, in England, relates back to the first act of bankruptcy committed by the bankrupt during the preceding twelve months, so as to invalidate all alienations, executions, &c., made or suffered during that period fraudulently or in favor of any person having notice of the act of bankruptcy. (*Bankr. Act*, 1869, § 11; *Cooper v. Chitty*, 1 Burr. 20.) So if a person has an authority to enter on land, and after entering he abuses the authority, he becomes a trespasser *ab initio*, because his wrongful act relates back to the time of his entry. *Six Carpenters' Case*, 8 Co. 146 a; 1 Sm. Lead. Cas. 133; for other instances of relation, see *Roe v. Griffiths*, 4 Burr. 1952. See *OMNIS RATIO HABITIO*, &c.

RELATED TO ME ONLY, (in a will). 3 Bro. Ch. 234.

RELATING TO THE SALE OF GOODS, (contract). 6 Taunt. 11; 3 T. R. 524.

—— (in a statute). 13 East 7.

Relatio est fictio juris et intenta ad unum (3 Co. 28): Relation is a fiction of law, and is intent to one point.

Relatio semper fiat ut valeat dispositio, et quando ad duas res refertur potest dispositio ita quod secundum unam vitatur et secundum alteram utilis est, tunc facienda est relatio ut valeat dispositio (6 Co. 78): Let reference be made always in such a manner that the disposition may avail, and when a disposition is referable to two things, so that by one it is bad,

and by the other is good, then let the reference be made to that by which the disposition may avail.

RELATION—RELATOR.—Where an action by way of information (*q. v.*) is instituted in the name of the government, but not immediately concerning its rights, the proceedings are taken on the relation, *i. e.* on the narrative or information, of a private person, whose name is inserted in the proceedings, and who is called the "relator." Thus, in the case of a public nuisance, any one who wishes to prevent it may cause an information to be exhibited by the attorney-general on his relation. In England, a "relator for the purpose of answering costs" is sometimes introduced in informations directly concerning the rights of the crown, in order to avoid the injustice arising from the crown's immunity from costs in ordinary suits. *Mitt. Pl. 28; Dan. Ch. Pr. 13 et seq.; Att'y-Gen. v. Mayor of Brecon, 10 Ch. D. 204.*

RELATION, (when does not include "wife"). 101 Mass. 38.

— (a stepson is not). 108 Mass. 382.

— (in a statute). 39 Wis. 96; 20 Am. Rep. 30.

RELATION, TO MY, (in a will). 1 Bro. Ch. 295.

RELATIONS, (defined). 14 Mich. 257; 9 R. I. 410; Amb. 507; Turn. & R. 161.

— (who are). 20 N. H. 481.

— (does not include those by marriage). 3 Ves. 231.

— (does not include the wife). 3 Atk. 758, 761; 1 Ves. Sr. 84.

— (equivalent to "next of kin"). 3 Bro. Ch. 64; 3 Meriv. 689.

— (includes those designated by statute of distribution). Turn. & R. 161.

— (in a statute). 1 Root (Conn.) 250, 361.

— (in a will). 8 Serg. & R. (Pa.) 45; 11 Id. 103; Amb. 397, 729; 1 Atk. 470; 1 Bro. Ch. 31, 33, 207; Cas. t. Talbot 251; 1 Cox Ch. 234; Dick. 50; Pr. Ch. 401; 4 Ves. 719 *n.*; 5 Id. 502, 529; 8 Id. 38, 42; 19 Id. 299, 301, 425, 427; 4 Kent Com. 537 *n.*; 1 Chit. Gen. Pr. 109; 4 Com. Dig. 154; 8 Id. 429, 474; 8 Petersd. Abr. 117 *n.*

RELATIONS, MOST NECESSITOUS, (bequest to). Amb. 636.

RELATIONS, MOTHER'S POOR, (bequest to). Amb. 507.

RELATIONS, NEAREST, (devise to). Amb. 70; 19 Ves. 400, 404.

RELATIONS OF HIS FATHER'S AND MOTHER'S SIDE, (devise to). 2 Vern. 381.

RELATIONS ON HIS SIDE, (in a will). 1 Taunt. 283.

RELATIONS, POOR, (in a will). Dick. 380; 2 Eq. Cas. Abr. 190; 1 Sch. & L. 111; 7 Ves. 423; 17 Id. 371.

RELATIONS, POOREST, (in a will). Amb. 595.

RELATIVE.—(1) A kinsman; a person connected with another by blood or affinity. (2) A person or thing having relation or connection with some other person or thing: as, relative rights, relative powers, *infra*

RELATIVE FACT.—In the law of evidence, a fact having relation to another fact; a minor fact; a circumstance. *Burrill Circ. Ev. 121, n. (d).*

RELATIVE POWERS.—Powers which relate to land. They are so called to distinguish them from powers which are collateral to land.

RELATIVE PROPORTION, (in a statute). 103 Mass. 134.

RELATIVE RIGHTS.—As opposed to those rights which are called "absolute," are rights correlating (*i. e.* corresponding) with duties lying on assignable individuals, and not (primarily at least) on the world at large. Rights of property are usually relative; and rights to one's person (whether life, or limb, or reputation,) are absolute.

RELATIVES (in a statute). 51 Iowa 670, 671. — (in a will). 14 N. Y. 291; 3 Bradf. (N. Y.) 382; 5 Redf. (N. Y.) 266; L. R. 15 Eq. 148.

Relativorum, cognito uno, cognoscitur et alterum (Cro. Jac. 539): (Of relatives, one being known, the other is also known.)

RELATOR.—An informer. In the case of an information being filed by the attorney-general at the relation of some informant, such informant is termed a "relator," and the information is said to be at the relation of such person. *See INFORMATION; RELATION.*

RELATRIX.—A female relator.

RELEASE.—

§ 1. **Of claim.**—In the most general sense of the word, "a release is the giving or discharging of the right or action which a man hath or may have or claim against another man or that which is his." (*Shep. Touch. 820; Litt. § 444.*) Thus, if A. commits a breach of a contract which he has entered into with B., and B. gives up the right of action which he has thus acquired,

he is said to release A. (As to releases generally, see Chit. Cont. 706 *et seq.*; Leake Cont. 497 *et seq.*) So a person may release property from a charge. See DISCHARGE.

§ 2. **General release.**—When two persons have had several dealings, from which demands and rights of action, whether mutual or not, have arisen or may in future arise, a release of all such demands and rights of action is called a "general release." When trustees or executors have wound up an estate they usually require a release from the persons beneficially entitled before handing over or dividing it, in order to clear themselves of responsibility.

§ 3. **By operation of law.**—A release sometimes takes place by operation of law. Thus, if A. covenants not to sue B. for a debt which he owes him, this operates as a release, because otherwise A. might sue B. for the debt, and then B. might sue A. for breach of his covenant, which would cause a circuitry of action. But if A. has a right of action against two or more, and covenants with one of them not to sue him, this does not operate as a release of the others, though an express release to him would have that effect. (Hutton v. Eyre, 6 Taunt. 289; Crague v. Jones, L. R. 8 Ex. 81; Green v. Wynn, 4 Ch. App. 204. See JOINT, § 5.) For the same reason, although a bankrupt or liquidating debtor who obtains his discharge, or a debtor who effects a composition with his creditors, is thereby released by operation of law from all his debts, with certain exceptions, (see BANKRUPT, p. 111, *n.*; DISCHARGE, § 4,) this does not release persons with whom he is jointly liable for any debt. Megrath v. Gray, L. R. 9 C. P. 216.

§ 4. **Real property.**—In the English law of real property, a release (which corresponds pretty nearly to the American quit-claim deed (*q. v.*)) is where a person having a right, title, or claim in or to land, gives it up to some one else who has an interest in the land of such a nature as to qualify him for taking the right so relinquished. (Burt. Comp. R. P. § 45. See CONVEYANCE, § 4.) Examples are given below.

A release may enure (*i. e.* operate or take effect) in four ways. Shep. Touch. 321; Co. Litt. 193 b.

§ 5. **By mitter l'estate.**—First, by way of *mitter l'estate*, *i. e.* by giving or transferring an estate or interest; as where one of three joint tenants releases his interest in the land to one of his co-tenants. Litt. § 304.

§ 6. **By mitter le droit.**—Secondly, by way of *mitter le droit*, *i. e.* by giving or transferring a right of entry or similar right, as where a person who has been disseised of land releases his right of entry to the disseisor, and thus vests the full title to the land in him (Litt. §§ 306, 466; Co. Litt. 194 a, 266 a.) If a man is disseised by A. and B. and releases his right to A., this vests the title in A. to the exclusion of B. This is sometimes called a "release by way of entry and feoffment," because it produces the same effect (for some purposes) as if the disseisee had entered and then made a feoffment to A. Litt. §§ 306, 472; Co. Litt. 276 a, 278 a.

§ 7. **By extinguishment.**—Thirdly, by way of extinguishment; thus, if the owner of a seignory which involves a service due from the tenant in fee releases it to the tenant, this operates by way of extinguishment, because the tenant cannot have a service to receive from himself. (Litt. § 479.) This is sometimes called a "release by way of extinguishment" as against all persons, as opposed to a release by which the right passes to the releasee, and which, therefore, operates by way of extinguishment only so far as the releasor is concerned, and does not otherwise affect the existing interests in the land; thus, if a man is disseised and the disseisor makes a feoffment to two men in fee, and the disseisee then releases to one of the feoffees, this shall enure to both of them by way of extinguishment. *Id.* §§ 307, 470, 478; Co. Litt. 280 a.

§ 8. **By creation, or enlargement.**—Fourthly, by way of creation or enlargement of an estate, as where the owner of the fee-simple in land grants a lease for years and afterwards releases his estate to the lessee and his heirs, then the fee-simple is vested in the lessee. But the releasee must be in possession or seisin of the land to make such a release effectual; an *interesse termini* is not sufficient. Litt. §§ 459, 465; 1 Dav. Prec. Conv. 72. See LEASE AND RELEASE.

§ 9. **Admiralty.**—In Admiralty actions, when a ship, cargo or other property has been arrested, the owner may obtain its release by giving bail or paying the value of the property into court, (Wms. & B. Adm. Pr. 209;) upon this being done he obtains a release, which is a kind of writ under the seal of the court, addressed to the marshal, commanding him to release the property. *Id.* 220, Form 30.

RELEASE, (defined). 22 Minn. 532, 534; 17 How. (N. Y.) Pr. 413, 416; 7 Com. Dig. 219; 1 Shep. Touch. 320.

— (what is). 3 Harr. (N. J.) 134; 2 Johns. (N. Y.) 186; 1 Hawks (N. C.) 64; 7 Wheel. Am. C. L. 511; 1 Chit. Gen. Pr. 314.

— (what is not). Taney (U. S.) Dec. 448; Coxe (N. J.) 81; 9 Cow. (N. Y.) 37; 4 Wend. (N. Y.) 365; 1 Atk. 398, 401.

— (when equivalent to a "surrender"). 1 Chit. Gen. Pr. 319.

— (effect of). 4 Bos. & P. 113; 4 Mau. & Sel. 423; 1 Mod. 99.

RELEASE, (what possession will render operative). 5 Pick. (Mass.) 423.

_____ (will not bar a future right). 11 Wend. (N. Y.) 120.

_____ (deed of, when will operate as a grant). 9 Pick. (Mass.) 80.

_____ (deed of, when not an estoppel). 5 Barn. & A. 606.

_____ (an award to). Bunb. 250.

_____ (to one not in possession). 7 Mass. 381.

_____ (by one of several plaintiffs). 3 N. H. 96; 13 Johns. (N. Y.) 286.

_____ (by one of several partners). 3 Johns. (N. Y.) 68.

_____ (by one of two trustees). 22 Wend. (N. Y.) 549.

_____ (by one on a joint execution, effect of). 7 Wheel. Am. C. L. 512.

_____ (executed by an attorney in his own name). 20 Wend. (N. Y.) 251.

_____ (of one joint obligor, effect of as to others). 13 Mass. 151; 17 Id. 581, 584; 2 Gr. (N. J.) 114; 3 Id. 423; 7 Johns. (N. Y.) 207;

9 Wend. (N. Y.) 336; 12 Id. 124; 25 Id. 346;

2 Hen. & M. (Va.) 38; 7 Wheel. Am. C. L. 519; 1 Atk. 294; 1 Car. & P. 435; 6 Ves. 146.

_____ (by an administrator). 2 Ld. Raym. 786.

_____ (of a debt). 8 Ves. 417.

RELEASE AND ASSIGN, (in a deed). 10 Johns. (N. Y.) 456.

RELEASE, GENERAL, (award of). 2 W. Bl. 1117.

RELEASE OR WAIVER OF EXEMPTION, (in homestead law). 3 Minn. 53.

RELEASE TO USES.—The conveyance by a deed of release to one party to the use of another is so termed. Thus, when a conveyance of lands was effected, by those instruments of assurance termed a lease and release, from A. to B. and his heirs, to the use of C. and his heirs, in such a case C. at once took the whole fee-simple in such lands, B. by the operation of the Statute of Uses, being made a mere conduit pipe for conveying the estate to C.; and B. was called the "releasee to uses."

RELEASEE.—The person to whom a release is made.

RELEASER, or RELEASOR.—The maker of a release.

RELEASING, (in a will). Willes 153, 159.

RELEGATIO VEL DEPORTATIO.—Were forms of punishment known to the Roman law, and were (in effect) banishment or transportation. *Deportatio* was the severer of the two, involving loss of citizenship, and consequently of the *patria potestas* and other civil rights, whereas *relegatio* involved no such loss, but simply restricted the banished person to some particular place.—*Brown*

RELEGATION is said to be where a man is temporarily exiled or banished by special act of parliament. It was never a civil death. Co. Litt. 133a. See **ABJURATION**, § 1.

RELEVANCY—RELEVANT.—**LATIN**: *relevare*, to lift up or support. A fact is relevant when it supports the contention of one of the parties. The use of the word in this sense seems to be modern.

§ 1. In the law of evidence, a fact is said to be relevant when it is so connected, directly or indirectly, with a fact in issue in an action or other proceeding, that evidence given respecting it may reasonably be expected to assist in proving or disproving the fact in issue. Thus, if A. is tried for the murder of B. by poison, the fact that he had previously been guilty of other crimes would be irrelevant; but the fact that, before B.'s death, A. procured poison similar to that by which B. died would be relevant. So if the question in an action is whether A., the owner of land adjoining a river, owns the entire bed of it or only half the bed at a particular spot, the fact that he owns the entire bed a little lower down the river is relevant. Jones v. Williams, 2 Mees. & W. 326.

§ 2. The question of the relevancy of a fact to a given inquiry is of importance, because evidence is not admissible to prove an irrelevant fact. Best Ev. 352; Steph. Dig. Ev. 135; Mr. F. Pollock in "Fortnightly Review" for September, 1876. On the peculiar use of "relevant" as equivalent to "admissible," by Sir J. Stephen, see "Solicitors' Journal," 30th September, 1876. See **ADMISSIBLE**.

RELICT.—A widow.

RELICTA VERIFICATIONE.—See **COGNOVIT**, § 2.

RELITION.—The sudden recession of the sea from land. See **ALLUVION**; **AVULSION**; **DERELICTION**.

RELITION, (defined). Ang. Waterc. § 57.

RELIEF.—**NORMAN-FRENCH**: *relief*, *reliefue*, *relief*; late **LATIN**: *relevium*, *relevatio*, because, it is said, the heir paid it to take up (*relevare*) his inheritance. Britt 177b; Bract 88a; Spel Feuds (Post. Works 81); Hargrave's note to Co. Litt 88a. See, further, Chut's Laws II. 70; Grimm. D. R. A. 871.

§ 1. **Real property—Relief-service**.—In the English law of real property, a relief is a payment which a tenant of full age is bound to pay to the feudal lord on succeeding to the land by descent. By the common law it is an incident to the service of every free tenure, and is hence sometimes called "relief-service" (Co.

Litt. 83a; Litt. § 126; Co. Copyh. § 25); but owing to the gradual extinction of seignories in ordinary cases, reliefs are now rarely met with, except where freehold land is held of the lord of a manor at a yearly quit rent of sufficient value to make it worth collecting, in which case the relief consists of one year's rent. (Wms. Seis. 26; Warrick v. Queen's College, L. R. 6 Ch. 716.) This is a socage-relief; reliefs incident to knights' service were abolished by Stat. 12 Car. II. c. 24. A relief lies in render (*q. v.*) and may be distrained for. Co. Copyh. § 25; Co. Litt. 83a, 162b.

§ 2. **Relief by custom, &c.**—Improper reliefs differ from ordinary reliefs in being derived from custom, prescription or express reservation. A prescriptive relief is one which is presumed to have been reserved by a deed which has been lost. (See LOST GRANT; PRESCRIPTION.) A customary relief (or relief-custom) is due by the special custom of some manors on every descent, and in some cases on every purchase, of freehold tenements held of the manor, and in some manors the customary fines in respect of copyholds are called reliefs. (See FINE, § 3 *et seq.*) Reliefs due by custom and prescription are not recoverable by distress unless the custom or prescription warrants it. Elt. Copyh. 190; Co. Litt. 93a, and Hargrave's note.

§ 3. **Relief by action.**—Every action (except actions for discovery and a few others) is instituted for the purpose of obtaining relief, *i. e.* satisfaction for a past injury, or the prevention of a threatened injury, or the enforcement or protection of a right. A plaintiff usually claims not only a particular kind of relief ("specific relief"), but also "general relief," by asking for such further or other relief as the nature of the case may require, and he may ask for "alternative relief," *i. e.* he may mention two kinds of relief, and ask for one of them, *e. g.* either specific performance or damages.

§ 4. **Paupers.**—As to the relief of paupers, see POOR LAW.

RELIEF, (in rule of court). 3 Ch. D. 793.

RELIEF OF THE POOR, (a trust for). 2 Crompt. & J. 636.

RELIEF TO WIDOW, (when includes relief to children). Wilberf. Stat. L. 126, 127.

RELIEVE.—LATIN: *relevare*, to lift up, support; probably through the French. Littré Dict. *s. v.* *Reliever*.

In feudal law, relieve is to depend: thus, the seignory of a tenant *in capite* relieves of the crown, meaning that the tenant holds of the crown. The term is not common in English writers. See an instance in Mad. Bar. Ang. 2.

RELIGION, (defined). 23 Ohio St. 211, 243.

RELIGION, OFFENSES AGAINST.—They are, (1) Apostasy. (2) Heresy. (3) Re-

viling the ordinances of the church. (4) Blasphemy. (5) Profane swearing. (6) Conjurament or witchcraft. (7) Religious imposture. (8) Simony. (9) Profanation of the Lord's day. (10) Drunkenness. (11) Lewdness. See the various titles.

RELIGIOUS HOUSES.—Places set apart for pious uses, such as monasteries, churches, hospitals, and all other places where charity was extended to the relief of the poor and orphans, or for the use or exercise of religion. 1 Steph. Com. (7 edit.) 358; 2 Id. 279; 4 Id. 159.

RELIGIOUS IMPOSTORS.—Those who falsely pretend an extraordinary commission from heaven, or terrify and abuse the people with false denunciations of judgment; punishable with fine, imprisonment, and infamous corporal punishment. 4 Br. & Had. Com. 71.

RELIGIOUS MEN.—Such as entered into some monastery or convent, there to live devoutly. They were held to be *civilliter mortui*.

RELIGIOUS SOCIETY, (in a statute). 6 Mass. 413; 3 Paige (N. Y.) 301.

RELINQUISHMENT.—When a person admitted to the office of priest or deacon in the Church of England has resigned his office, he may execute a deed of relinquishment, and after a certain period he becomes incapable of acting in any way as a priest or deacon, loses all privileges attached to the office, and is freed from all liabilities and disabilities to which he would otherwise have been subject. Clerical Disabilities Act, 1870. See RESIGNATION.

RELIQUA.—The remainder or debt which a person finds himself debtor in upon the balancing or liquidation of an account. Hence *reliquary*, the debtor of a *reliqua*; as also a person who only pays piecemeal.—*Encycl. Lond.*

RELIQUES.—Remains, such as the bones, &c., of saints, preserved with great veneration as sacred memorials; they have been forbidden to be used or brought into England. 3 Jac. I. c. 26.

RELOCATE, (equivalent to "locate anew"). 117 Mass. 416, 422.

RELOCATION.—In the Scotch law, a reletting or renewal of a lease; a *tacit relocation* is permitting a tenant to hold over without any new agreement.

REM.—See IN PERSONAM.

REM, IN, (proceedings, defined). 13 Wend. (N. Y.) 417.

REMAIN IN FORCE, (the laws of a conquered country shall). 2 Hagg. Cons. 371.

REMAINDER.—

§ 1. A remainder is a "remnant of an estate in lands or tenements, expectant upon a particular estate created together

with the same at one time." (Co. Litt. 49a, 143a.) Thus, if A., a tenant in fee simple, grants land to B. for life, and after B's decease to C. and his heirs, C's interest is termed a remainder in fee expectant on the decease of B. Wms. Real Prop. 253.

§ 2. As regards its incidents, a remainder chiefly differs from a reversion (*q. v.*) in this, that between the particular tenant (B.) and the remainderman (C) no tenure exists, from which it follows that no rent-service can be incident to a remainder. Wms. Real Prop. 252. See RENT, § 2; TENURE.

§ 3. **Vested.**—In the above instance the remainder is said to be vested (*i. e.* vested in interest), because it is ready to come into possession the moment B's estate happens to determine (Ferne Rem. 216; Wms. Real Prop. 255); in other words, the existence of B's estate is the only thing which prevents C's estate from coming into possession; and, therefore, whenever B. dies, the land passes to C., if he is living, or to his heir or devisee if he is dead.

§ 4. **Contingent.**—If, however, A. had limited the land after B's estate to the heir of C., a living person, the remainder would not be ready to come into possession at once, because, until C. dies, there is no one to take the remainder; for *nemo est hæres viventis*, and during C's life there is no such person as his heir. (Wms. Real Prop. 267.) So if land is limited to B. for life, and after his death, if C. should then be living, to D., D's remainder is not vested, because its coming into possession depends not merely on the determination of B's estate, but on its determination during C's life; hence, such a remainder is termed a "contingent remainder," being "a remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate." (Ferne Rem. 1. See CONTINGENCY, § 2.) When the uncertainty is removed, the remainder becomes vested. The possibility that a remainder may never come into possession at all, does not of itself make the remainder contingent. Thus, if land

be granted to A. for life, remainder to B. for life, B's remainder is vested, although he may die before A., and consequently never come into possession. *Id.* 216.

§ 5. **Trustees to preserve contingent remainders.**—Every contingent remainder was formerly liable to destruction, in England, by the determination of the particular estate before the remainder vested. Thus, suppose land to be limited to A., a bachelor, for life, and after his death to his eldest son and the heirs of his body, and in default of such issue to B. and his heirs, then if A., before the birth of a son, forfeited or surrendered his life estate, or merged it by purchasing B's remainder in fee, the contingent remainder to his son would have been destroyed. (Wms. Real Prop. 281 *et seq.*; Ferne Cont. Rem. 316.) But if the legal estate was outstanding in a mortgage the remainder would be preserved. (*Astley v. Micklethwait*, 15 Ch. D. 59.) To prevent this, the following plan was adopted in settlements and similar instruments giving contingent remainders to the children of a tenant for life. Following the limitation of the estate to the tenant for life, an estate, to commence on the determination of his estate by any means during his life, was given to certain persons and their heirs during his life as trustees to preserve the contingent remainders, for which purpose they were if necessary to enter on the premises, but to permit the tenant for life to receive the rents and profits during the rest of his life. (Wms. Real Prop. 285; Elph. Conv. 323. The original form devised by Sir O. Bridgman is given in Wms. Seis. 193.) These were called "trusts to preserve contingent remainders." But the Stat. 8 and 9 Vict. c. 106, § 8, enacted that contingent remainders should not in future be liable to be destroyed by the forfeiture, surrender or merger of any preceding estate of freehold; and now by the Act 40 and 41 Vict. c. 33, no contingent remainder created by any instrument executed after the 2d of August, 1877, can be destroyed by the determination of the particular estate before the remainder vests, if the remainder would have been valid as a springing or shifting use, or executory devise, or other limitation, had it not had a sufficient estate to support it as a contingent remainder. Thus, if land is limited to A. for life, with remainder to his eldest son who shall attain twenty-one, and A. dies before any of his sons attains twenty-one, the remainder will nevertheless take effect as soon as a son attains twenty-one. If, however, land is limited to A. for life, with remainder to his eldest son who shall attain twenty-five, the remainder will only take effect if the son attains twenty-five before A's death, because such a limitation could not take effect as an executory limitation by way of use or trust, being contrary to the rule against perpetuities. So that the only difference now between a contingent remainder and an executory devise is, that the former is not affected by the rule against perpetuities, if it vests before the particular estate determines. (Wms. Real Prop. 273; Wms. Seis. 205; Char. R. P. Stat.) But an equitable contingent remainder is void for remoteness if it infringes the rule against perpetuities. *Abbiss v. Burney*, 17 Ch. D. 311.

§ 6. Contingent remainders are subject to a rule resembling that against perpetuities, for an estate cannot be given to an unborn person for life, followed by any estate to any child of such unborn person; in such a case the estate given to the child of the unborn person is void. Wms. Real Prop. 276. See PERPETUITY.

§ 7. Vested in interest, contingent as to amount.—A remainder may be vested in interest and contingent as to the property comprised in it. Thus, if land is limited to A. for life, remainder to the children of B. in common in fee, each child of B. on his birth in A.'s lifetime takes a vested remainder in an undivided share, the amount of which is contingent on the number of children of B. who may be born in A.'s lifetime. If the remainder is to the children of B now or hereafter to be born, whether in the lifetime of A. or not, the time for ascertaining the persons to take, according to the English law, will also be the death of A., unless the remainder is limited by an instrument executed after the passing of the Contingent Remainders Act, 1877, (2d of August,) in which case the time will be the death of B., which would also be the time in American law.

§ 8. Cross-remainders.—Cross-remainders arise when land is given in undivided shares to two persons, A. and B., for particular estates, in such a manner that upon the determination of the particular estates in A.'s share, the whole of the land goes to B., and *vice versâ*, the remainderman or reversioner not being let in till the determination of all the particular estates in both shares. (Co. Litt. 195b; Butler's note (1).) Perhaps the commonest instance of cross-remainders in England occurs in an ordinary settlement of land (whether by deed or will), where, after limiting an estate tail in the land to each of the sons of the tenant for life in succession, provision is made for the failure of male issue by limiting it to the daughters in equal shares as tenants in common in tail, with a clause that on the death of any daughter without issue, her share (both original and accrued) shall go to the other daughters in tail, so that if all the daughters but one die without issue,

that one takes everything, (Elph. Conv. 340. As to cross-remainders in wills, see Wats. Comp. Eq. 1316 *et seq.*) and the remainderman or reversioner in fee takes nothing unless and until they all die without issue.

REMAINDER, (defined). 6 Mod. 112.

— (in revised statutes). 5 Paige (N. Y.) 466.

— (in a will). 18 Pick. (Mass.) 295, 298; 3 Harr. (N. J.) 28; 1 P. Wms. 603, 605; 1 Dyer 46b; 3 Ch. D. 703.

REMAINDER AND RESIDUE, (in a will). 4 Wash. (U. S.) 645; Cowp. 299.

REMAINDER AND REVERSION, (in a will). 8 Com. Dig. 443.

REMAINDER, CONTINGENT, (when created). 8 Conn. 348.

REMAINDER OF MY ESTATE, (in a will). 2 Pick. (Mass.) 463.

REMAINDER OF MY PROPERTY, (in a will). 3 Pick. (Mass.) 374; 5 Bos. & P. 214, 221.

REMAINDER OF THE PROFITS, (devise of). 4 T. R. 89.

REMAINDER TO B. AND C., (in a will). 2 Eden 115.

REMAINDER, VESTED, (may be sold under execution). 2 Halst. (N. J.) 180.

REMAINDERMAN.—A person entitled to an expectant estate in remainder.

REMAINDERS OF MY DIFFERENT BEQUESTS, (in a will). 14 Ves. 363.

REMAINING GOODS AND CHATELS, (in a will). 6 Watts (Pa.) 345.

REMAINING PART, (in a will). 20 Wend. (N. Y.) 485.

REMAINS, WHAT, (in a will). 9 Ves. 199, 206.

REMAND.—To remand a defendant or prisoner in a proceeding before a magistrate or justice of the peace, is to adjourn the hearing for a certain time. (Stone Just. 115.) Also, where a prisoner comes before a judge on *habeas corpus* and a discharge is refused him, the judge is said to remand the prisoner.

REMANDING A CAUSE.—The sending back, by a court to which a cause has been removed from another court, either by appeal, writ of error, or under a statute authorizing such removal, of such cause to the court *a quo*, to have some action on it taken there.

REMANENT PRO DEFECTU EMPTORUM.—They remain unsold for want of buyers. A sheriff's return to a writ of *fi. fa.*

REMANET, in the practice of the English Queen's Bench Division, is an action which has

been set down for trial at one sittings, but has not come on, so that it stands over to the next sittings.

REMEDIAL STATUTES.—Those which are made to supply such defects, and abridge such superfluities in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned judges, or from any other cause. This being effected either by enlarging the common law where it is too narrow and circumscribed, or by restraining it where it is too lax and luxuriant, has occasioned a division of remedial acts of parliament into enlarging and restraining statutes.—*Wharton*.

REMEDIAL STATUTES, (defined). 1 Bl. Com. 86.

— (what are). 3 Halst. (N. J.) 330.

— (construction of). 6 Conn. 409; 2 Bail. (S. C.) 335; 8 Wheel. Am. C. L. 138.

REMEDIES BY ACT OF THE PARTY.—*See* REMEDY.

REMEDIES BY OPERATION OF LAW.—*See* REMEDY.

REMEDY.—Remedy is the means by which the violation of a right is prevented, redressed, or compensated. Remedies are of four kinds: (1) By act of the party injured, the principal of which are defense, recaption, distress, entry, abatement and seizure; (2) by operation of law, as in the case of retainer and remitter; (3) by agreement between the parties, *e. g.* by accord and satisfaction, and arbitration; and (4) by judicial remedy, *e. g.* action or suit. (*See* the various titles.) The last are called "judicial remedies," as opposed to the first three classes, which are "extra-judicial." As to the distinction between a remedy and a right, *see* LIMITATION, § 6; and as to the distinction between equitable injuries and equitable remedies, *see* INJURIA, § 2.

REMEDY, (defined). 22 N. Y. 67, 87.

— (mechanic's lien is not). 17 Minn. 342.

REMEMBRANCER.—The remembrancer of the city of London is parliamentary solicitor to the corporation, and is bound to attend all courts of aldermen and common council when required. Pulling Laws of Lond. 122.

REMEMBRANCERS OF THE EX-CHEQUER.—These were three officers, or clerks, of the Exchequer. One was called the "king's remembrancer;" another the "lord treasurer's remembrancer;" and the third, "the remembrancer of the 'first fruits.'" (1) The king's remembrancer entered in his office all recognizances taken before the barons for any of the king's debts, or for appearances, or for observing of orders; he wrote process against the collectors of customs, subsidies, and fifteenths, for the accounts, &c. (2) The lord treasurer's remembrancer made process against all sheriffs, escheators, receivers, and bailiffs, for their account; also of *ieri facias* and extent for any debts due to the king either in the pipe or with the auditors, &c. (3) The remembrancer of the first fruits took all compositions and bonds for the first fruits and tenths, and made process against such as did not pay the same.—*Cowell*. The duties of all these officers have for a long time been discharged by the king's (now queen's) remembrancer, and the office (together with the duties) of the latter has been now transferred to the Central Office of the Supreme Court.—*Brown*. *See* QUEEN'S REMEMBRANCER.

REMERER.—*See* RACHAT.

REMISE.—To surrender or return; to release and quit-claim.

REMISE DE LA DETTE.—In the French law, the release of a debt.

REMISE, RELEASE, AND FOREVER QUIT-CLAIM, (in a deed). 10 Johns. (N. Y.) 456.

REMISE, RELEASE AND QUIT-CLAIM, (in a deed). 6 N. Y. 422.

Remissius imperanti melius paretur (3 Inst. 233): A man commanding not too strictly is better obeyed.

REMISSNESS, (in sending a message, implies a sending or delivery, but in a tardy, negligent manner). 6 Abb. (N. Y.) Pr. n. s. 403, 423; 54 Barb. (N. Y.) 505.

REMIT—REMISSION.

§ 1. To remit a debt or penalty is to release it. To remit in the mercantile sense, is to send money to a distance. *See* REMITTANCE.

§ 2. **Remitting cause.**—As in the majority of cases, a Court of Appeal sits merely to decide questions of law, and has not the machinery to carry its decisions into effect, it is obliged, when it reverses or varies the decision of an inferior tribunal in such a way as to make further steps necessary, to remit or send back the case to the inferior tribunal, so that such steps may be taken there as are necessary to carry the decision into effect. Thus, supposing a court gives judgment for the

defendant in an action in which, if the plaintiff were successful, inquiries would have to be taken, then, if the Appellate Court reverses that decision and gives judgment for the plaintiff, it remits the case to the lower court in order that the inquiries may be taken, or it may remit the case with directions as to the relief to be given to the plaintiff. This is sometimes called "remitter," or "remittitur." "Remit," however, is seldom used in America in this sense, "remand" being the proper term. See REMANDING A CAUSE.

§ 3. **Remission.**—In Privy Council practice, on a cause being remitted to the inferior court, a document called a "remission" is in some cases (*e. g.* ecclesiastical appeals) required to be issued. It is a kind of writ commanding the judge to resume and proceed with the cause. (Macph. App.) 129; Wms. & B. Adm. Pr. 319.) Admiralty appeals no longer go to the Privy Council, but "remissions" seem to be still used in ecclesiastical appeals.

REMIT AND FORGIVE, (in a will). 2 Price 31.

REMITMENT.—The act of sending back to custody; an annulment.

REMITTANCE.—Money sent by one person to another, either in specie, bill of exchange, check, or otherwise.

REMITTEE.—The person to whom a remittance is sent.

REMITTER "is where a man hath two titles to lands or tenements, viz., one a more antient title, and another a more latter title; and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthie title" (Litt. § 659); but the second title must come to him without his own act or default. (Co. Litt. 347b.) Thus, if A. disseises B., tenant in fee-simple of land, and then makes a lease of the land to him by deed poll for a term of years, and B. enters under the lease, this entry is a remitter to B.; *i. e.* he regains his original estate in fee simple, and is not considered as entitled to the land by virtue of the lease to him by A. (Litt. § 695; Butler's note to Co. Litt. 347b.) But if B. took an estate from A. by indenture, this would estop him from claiming any estate, except that given him by the deed, and would thus prevent a remitter, because a

"deed indented is the deed of both parties, and therefore as well the taker as the giver is concluded." Co. Litt. 363b. See RECONTINUANCE.

REMITTITUR DAMNA.—When one of the parties to an action obtains judgment for damages which he is either not entitled to, or is willing to abandon, he makes an entry on the record called a *remittitur damna*, by which he gives up or remits those damages. Thus, if the jury give greater damages than the plaintiff has claimed by his pleading, the mistake is rectified by entering a *remittitur damna* as to the excess. So when the defendant, in an action of replevin, obtains judgment by default, he is entitled not only to a return of the goods replevied, but also to damages for being deprived of them, which must be assessed by a writ of inquiry; but the damages being usually trifling in amount, they are generally remitted, in order to save the expense of a writ of inquiry. Arch. Pr. 805, 1209; Chit. Gen. Pr. 994, 1093, 1517.

REMITTITUR DAMNA, (entry of, on the record in an action of ejectment). 1 Johns. (N. Y.) Cas. 281.

— (cannot be made after the term in which judgment was rendered). 4 Conn. 309.

REMITTITUR OF RECORD.—

§ 1. **In American law.**—The sending back of a record from an appellate court to the court below, for entry of judgment and issue of execution, or for a new trial, or other proceedings.

§ 2. **In English law.**—Formerly when a writ of error, in the Exchequer Chamber, abated or was discontinued, the transcript must have been remitted, and a *remittitur* entered, before a defendant could sue out execution; but this was afterwards unnecessary, for the record remained in the court below, and execution was, therefore, in all cases, issued by and out of that court. (H. T. 4 Will. IV. c. 16.)—Wharton.

REMOTE.—

§ 1. **Damage** is said to be too remote to be actionable when it is not the legal and natural consequence of the act complained of. Thus, it has been held, in England, that if a master discharge his servant on account of slanderous words spoken of him, the damage caused by the dismissal is too remote to entitle the servant to damages in respect of it against

the person guilty of the slander, because it is not the legal and natural consequence of the slander. (*Vicars v. Willcock*, 8 East 1; 2 Sm. Lead. Cas. 534.) So damage caused by failure to transmit a telegraphic message has been there held to be too remote. *Sanders v. Stuart*, 1 C. P. D. 326.

§ 2 As to limitations being void for remoteness under the rule against perpetuity, see PERPETUITY; as to remote possibilities, see POSSIBILITY, § 2; and as to remote heirs, see HEIR, § 3.

REMOTE, (when a bequest is). 4 Beav. 248; 5 *Id.* 147; 8 Jur. 329.

—— (when a bequest is not). 5 Beav. 123.

—— (when a trust is not). 12 Sim. 93.

REMOTENESS OF EVIDENCE.

—Evidence, whether direct or circumstantial, which is merely conjectural, *i. e.* which does not present an open and visible connection between the *factum probandum* and the *factum probans*, is rejected for remoteness.

Remoto impedimento emergit actio (*Wing*. 20): An impediment being removed, an action emerges, *i. e.* arises.

REMOVAL.—

§ 1. Poor law.—The casual poor of a parish or township (as opposed to its “settled” poor) are only entitled to relief in that parish or township until they can be removed to their place of birth or settlement, unless they have acquired the status of irremovability. 3 Steph. Com. 57. See IRREMOVABILITY; POOR; SETTLEMENT.

§ 2. From office.—A deprivation of office by the act of some person or body having lawful authority to exercise the right of removal. See AMOTION.

REMOVAL, (in a charter). 6 Conn. 532.

—— (in a statute). 1 Pick. (Mass.) 129; 4 Wend. (N. Y.) 512; 46 Vt. 60.

REMOVAL OF CAUSES.—

§ 1. From State court to U. S. Circuit Court.—It is provided by the United States Revised Statutes that in certain specified cases, actions originating in State courts may, upon petition to the U. S. Circuit Court, be removed for trial into that court. Both civil and criminal causes may, in proper cases, be so removed. See U. S. Rev. Stat. §§ 639–647; and Dillon on Removal of Causes.

§ 2. From one State court to another.—Causes as frequently transferred under statutory authority from one State court to another having better facilities for disposing of the cause removed, or more undoubted jurisdiction in the premises. Thus, in New York city, where an action for libel, slander, malicious prosecution, assault, seduction, or the like, is begun in the Supreme Court, or Common Pleas, or Superior Court, such cause may be transferred by the judge to the Marine Court for trial.

§ 3. In English law.—Actions in district registries.—An action commenced in the Central Office of the High Court may be removed from London to a district registry for any sufficient reason, (Rules of Court, xxxv. 13,) and an action proceeding in a district registry may be removed into the Central Office by the defendant as of right at any time between appearance and defense, except where the plaintiff has applied for and obtained judgment under Order XIV. *Id.* 11 *et seq.* See JUDGMENT, § 9.

§ 4. County Courts.—A cause may be removed from a County Court into the High Court by writ of *certiorari* where the sum claimed exceeds a certain amount—(1) if the defendant gives security for the amount claimed with costs; or (2) if a judge of the High Court thinks it a fit case to be tried in the High Court and the applicant gives security for costs. (Arch. Pr. 1412; Stat. 19 and 20 Vict. c. 103, §§ 35, 39.) As to the removal of judgments, see JUDGMENT, § 17.

§ 5. Inferior Courts.—A cause may be in general removed from an inferior court not of record into the High Court by *habeas corpus cum causa* or *certiorari* (*q. v.*), if the sum claimed exceeds £5 and the defendant gives security for the amount and costs. Arch. Pr. 1404, and see Jud. Act, 1873, § 90.

REMOVE, (defined). 12 Conn. 181, 187.

—— (as meaning change of domicile). 3 Jones (N. C.) L. 93.

REMOVE FROM, (in a statute). 31 Ind. 72.

REMOVE, GRUB UP OR DESTROY ANY FRUIT TREES, (a covenant not to). 6 Car. & P. 195.

REMOVED FROM OFFICE, (what is not being). Wall. (U. S.) C. C. 119.

REMOVING OUT OF THE COUNTY, (in attachment act). 47 Ga. 560; 15 Am. Rep. 655.

REMUNERATION.—Reward; recompense.

REMUNERATION, (in telegraph act). 3 Q. B. D. 428, 431.

RENANT, or RENIANT.—Denying. 32 Hen. VIII. c. 2.

RENCOUNTER.—A sudden meeting; as opposed to a duel, which is deliberate.

RENDER.—

§ 1. To render is to yield or pay, as to render a rent. (Litt. § 214.) So, some kinds of heriots are said to "lie in render," *i. e.* the tenant is bound to give the heriot to the lord. Hence, profits are divided into profits "lying in render," or those which the tenant is bound to yield or pay, such as rent (Co. Litt. 142a), and profits "lying in prender," which the person entitled to must take for himself. See PROFIT, § 3.

§ 2. Where a mine, quarry or the like is leased, it is sometimes stipulated that a certain proportion of the minerals gotten shall be delivered to the lessor by way of rent or royalty. This is called a "render." (Elph. Conv. 264.) It is a royalty in kind. See ROYALTY.

RENDER A FAIR, JUST AND PERFECT ACCOUNT IN WRITING, (in a bond). 1 Doug. 382.

RENDERED AN ACCOUNT, (in a statute). 65 Me. 296.

RENDERING OF SUCH JUDGMENT, (in a statute). 11 Wend. (N. Y.) 528.

RENDERING RENT FREE OF ALL TAXES, (in a lease). Carth. 135.

RENDITION, (of judgment). 54 Cal. 519; 3 Minn. 208.

RENEGADE.—One who has changed his profession of faith or opinion; one who has deserted his church or party.

RENEW, (defined). 124 Mass. 149, 151.

— (synonymous with "extend," as applied to a patent). 4 Blatchf. (U. S.) 271, 303.

— (in a contract). 128 Mass. 280.

RENEWAL, (in act of congress). 3 Blatchf. (U. S.) 201.

— (construction of covenant for). Cowp. 819; 2 Cox Ch. 174; 1 T. R. 229; 3 Ves. 690; 6 Id. 238; 8 Com. Dig. 701.

— (in the margin of a promissory note). 8 Conn. 336.

— (at the bottom of a promissory note). 14 Mass. 312.

RENEWAL OF LEASE.—Substituting a new lease for an old one, *i. e.* in continuation of the term granted by the original lease. Some leases are renewable as of right, and others at the option of the landlord only; all renewals are usually upon terms, including the payment of some premium or renewal fine; and they may be either for lives or for years. A trustee renewing a lease holds it for the benefit of his *cestui que trust*, but with a lien for his renewal expenses.

RENEWAL OF LEASE, (what is). 1 Younge & C. 82.

— (power of, to trustees). 3 Madd. 491.

— (a covenant for, is a covenant running with the land). 1 Paige (N. Y.) 412.

RENEWAL OF NOTES, (in a power of attorney to make). 4 McCord (S. C.) 89, 438.

RENEWAL OF WRIT.—See WRIT OF SUMMONS.

RENEWAL, PERPETUAL, (construction of covenants for). 9 Ves. 325.

— (what is not a covenant for). 3 Ves. 295.

RENEWED, (indorsed on a promissory note). 34 Me. 547.

RENOUNCE—RENUNCIATION.

—A renunciation is a document by which a person appointed by a testator as his executor, or a person who is entitled to take out letters of administration upon the effects of an intestate in priority to other persons, renounces or gives up his right to take out probate or letters of administration; the document is filed in the registry or court of probate. Browne Prob. Pr. 138; Coote Prob. Pr. 192; Wms. Ex. 270 *et seq.* See RETRACTION.

RENOUNCE, (in a statute). 3 Rawle (Pa.) 398.

RENOUNCE, REMISE, RELEASE AND QUIT-CLAIM, (in a release). Cowp. 600.

RENOVANT.—Renewing.—*Cowell.*

RENT. — NORMAN-FRENCH: *rente* (Britt 105 b) from *render*, to yield; LATIN: *reddere*. See RENDER.

§ 1. Rent is a periodical payment due by a tenant of land or other corporeal hereditament; it is usually payable in money, but it may also be reserved in fowls, wheat, spurs or the like. (Co. Litt. 142a; Woodf. Land. & T. 338; Fawc. L. & T. 109.) When land is let free of rent and the landlord wishes to be able to obtain an acknowledgment of the tenancy when necessary, a nominal rent is frequently reserved, consisting of one peppercorn a year to be paid when demanded. Wms. Real Prop. 246.

Rents are of several kinds—

§ 2. **Rent service.**—Rent service is always incident to tenure, in England; in other words, it is that which is due when one man holds land of another by fealty (or any other service) and rent; as where a man holds land of another in fee-simple at a rent reserved before the Statute *Quia Emptores* (see FEE FARMS), or where an owner of land in fee at the present day leases it to another for ninety-nine years at a yearly rent.

In the latter case the rent is an incident to the reversion of the lessor or reversioner and passes with it if he grants it to another. (Litt. § 239.) Payment of a rent service may be enforced by distress (*q. v.*) (*Id.* § 213.) "It is called a 'rent service' because it hath some corporall service annexed unto it, which at least is fealty," (Co. Litt. 142a, 87 b;) but at the present day fealty is never exacted. Wms. Real Prop. 245.

§ 3. If the rent is severed from the reversion (as where either is assigned without the other) it becomes a rent in gross. Co. Litt. 148 b.

§ 4. **Rack rent.**—A rack rent is a rent of the full annual value of the land, or near it. 2 Bl. Com. 43.

§ 5. **Ground rent.**—When land is leased to a person on condition that he erects certain buildings on it, the rent reserved (which is small in comparison with the rent of the land when built on) is called the "ground rent." When the lessee has erected the building, he may sub-let at a rack rent, (calculated at an amount sufficient to repay to him, with a profit, the amount expended in building the house and also to cover the ground rent,) or he may take from the sub-lessee a fine amounting to not much less than what he has expended on the house, reserving a rent a little larger than the ground rent; this is generally called an "improved ground rent." Elph. Conv. 245.

§ 6. **Dead rent—Footage rent—Spoil-bank rent.**—When a mine, quarry, brickwork or similar property is leased, the lessor usually reserves not only a fixed yearly rent but also a royalty or galeage rent, consisting of royalties (*q. v.*), varying with the quantity of minerals, brick, &c., produced during each year. In this case the fixed rent is called a "dead rent." A footage rent is a rent payable for every acre a foot thick of minerals, and so in proportion for a greater or less thickness. A spoil-bank rent is a sum payable according to the quantity of rubbish from a mine deposited on land belonging to the lessor. Elph. Conv. 264.

§ 7. **Rent charge.**—A rent charge is where a rent is payable in respect of land to a person who has no reversion in it, and a right to distress is given him by express agreement between the parties. As where a man (since "*Quia*

Emptores") conveys land in fee to another, reserving to himself and his heirs a certain rent with the right of distress, or if a man seised of land grants to another a yearly rent issuing out of it with a clause of distress. Litt. §§ 217, 218

§ 8. **Rent seck.**—Formerly where a rent (not being a rent service) was reserved or created without a clause of distress, the grantee had no remedy by distress, and hence the rent was called a "rent seck" (*redditus siccus*, a dry rent) (Litt. §§ 217, 218.) So if the owner of a rent service granted the rent to another, reserving the fealty to himself, the grantee had only a rent seck. (Litt. § 225. *See, however*, Co. Litt. 153 a, where a rent seck which may be distrained for is mentioned.) But this distinction between rent charges and rent seck was abolished by Stat. 4 Geo. II. c. 28, § 5, which gave the owner of every rent seck a right of distress for it, so that every rent created by grant is now in effect a rent charge. *Dodds v. Thompson*, L. R. 1 C. P. 133.*

§ 9. **Tithe rent charge.**—Under the Tithe Commutation Acts, a rent charge varying with the price of corn has been substituted for the right to take tithes in kind. An extraordinary tithe rent charge is payable in respect of highly productive land, such as hop-grounds and market gardens. Stat. 6 and 7 Will. IV. c. 71. *See* **TITHES**.

§ 10. **Fee farm and quit rents—Customary, assise and chief rents.**—Before the Statute "*Quia Emptores*," a person could convey land in fee-simple to be held of him and his heirs, and reserving a rent service from the grantee. Some instances of rents thus created still exist under the name of "fee farm rents" (*see* **FEE FARM**) or "quit rents," so called because in consideration of their payment the tenants are quit or discharged of all other services. (2 Bl. Com. 43.) Such rents are now found almost only in manors, being frequently due both by the freeholders and the copyholders; they are sometimes called "customary rents," being due by custom, (*see* *Hastings v. Hurley*, 16 Ch. D. 730;) or "rents of assise," from being fixed in amount; and those of the freeholders are frequently called "chief rents." 2 Bl. Com. 42; Wms. Seis. 26; *Elt. Copyh.* 190.

Every rent, except a rent service incident to a reversion, is an incorporeal hereditament. It may belong to a man in fee, or in tail, or for any other estate. (Wms. Real Prop. 331.) As to barring an estate tail in a rent, *see* *Butler v. (2)* to Co. Litt. 298 a; *Shelf. R. P. Stat.* 321.

See **ANNUITY: APPORTIONMENT**.

*By § 44 of the English Conveyancing Act, 1881, where a person is entitled to a rent charge or other annual sum charged on land, or on its income, (not being rent incident to a reversion, as to which *see* **RENT**, § 2,) he has, in the event of the annual sum being in arrear for a certain period, power to raise the arrears by entry and distress on the land, or by entering on and receiving the income of the land, or by demise the land to a trustee for a term of years upon trust to raise the annual sum by mortgage, sale or lease of the land for all or part of the term, or otherwise. This provision applies to

instruments coming into operation after the 31st December, 1881, so far as a contrary intention is not expressed.

Section 45 of the same act enables the owner of land, out of which a quit rent, chief rent, perpetual rent charge, or other perpetual annual sum (not being a tithe rent charge, or a rent reserved on a sale or lease, &c.) is issuing, to redeem the same by application to the copyhold commissioners, and by payment to the person entitled to the rent of the amount certified by the commissioners to be the capital value of the rent.

RENT, (defined). 4 Mo. App. 160; 6 Stew. (N. J.) 659; 7 Wheel. Am. C. L. 534 n.; 3 Kent Com. 460; 5 Price 14; 7 Com. Dig. 245; Com. L. & T. 95.

—— (what is). 2 Dowl. & Ry. 607.

—— (what is not). 6 Duer (N. Y.) 262, 266.

—— (when means "rent charge," and when "rent reserved"). Wilberf. Stat. L. 136.

—— (in a mortgage). 1 P. Wms. 294, 295.

—— (in a statute). 51 Vt. 121, 124; 6 Ch. D. 63; L. R. 7 Ex. 409; 8 Id. 196; 10 Id. 172; Wilberf. Stat. L. 298.

—— (in a will). Cro. Eliz. 637; 1 Dyer 5 b.

—— (when distress will lie for). 2 N. Y. 185, 151.

—— (who may distrain for). 3 Halst. (N. J.) 313.

—— (assignment of, under a lease). 2 Cox Ch. 233.

—— (follows the reversion). 1 Gr. (N. J.) 83.

—— (covenants to pay, run with the land). 21 Barb. (N. Y.) 646.

—— (is a tenement). 2 Ves. 204 n., 232.

RENT, ARREAR, (is a chose in action). 8 Cow. (N. Y.) 206.

RENT CHARGE.—See RENT, § 7.

RENT CHARGE, (defined). 23 Barb. (N. Y.) 216.

—— (is an interest in the land). 7 Wend. (N. Y.) 469.

RENT PAYABLE, (in a statute). L. R. 3 Q. B. 672.

RENT REMAINING UNPAID, (a transfer does not carry with it the remedy by distress). 2 Hill (N. Y.) 475.

RENT ROLL.—See RENTAL.

RENT SECK.—See RENT, § 8.

RENT SECK, (covenants to pay do not run with the land). 21 Barb. (N. Y.) 648.

RENT SERVICE.—See RENT, § 2.

RENT SERVICE, (defined). 2 N. Y. 135, 151.

—— (distinguished from "rent charge" and "rent seck"). 2 Cow. (N. Y.) 652.

—— (a ground rent in Pennsylvania is). 1 Whart. (Pa.) 337.

RENT TO BECOME DUE, (in a recognizance). 120 Mass. 126.

RENTAGE.—Rent.

RENTAL.—A roll on which the rents of a manor, or other estate, are registered or set down, and in accordance with which the landlord's agent collects them. It contains the lands and tenements let to each tenant, the names of the tenants, and other particulars connected therewith.

RENTAL, (what is not). 124 Mass. 527, 532.

RENTAL-RIGHTS.—A species of lease usually granted at a low rent and for life. Tenants under such leases were called "rentalers" or "kindly tenants."

RENTAL BOLLS.—In the Scotch law, when the tithes (tiends) have been liquidated and settled for so many bolls of corn yearly.—*Bell Duct.*

RENTE.—In the French law, an annuity.

RENTE VIAGERE.—In the French law, a life annuity.

RENTED, (defined). 24 Conn. 15, 24.

RENTS, (not equivalent to "earnings"). 120 Mass. 94.

—— (in administrator's bond). 12 Bush (Ky.) 215.

—— (in a deed, includes ground-rents). 2 Pa. St. 165.

—— (in statute of wills). 9 Cow. (N. Y.) 438.

—— (in a will). 5 Barn. & Ald. 64; Cro. Jac. 104; 1 P. Wms. 500; 1 Saund. 186 c; 2 Pres. Est. 176.

RENTS AND PROFITS, (include money realized from a sale). 1 Atk. 506; 1 Ves. 234.

—— (do not include a use). 9 Cow. (N. Y.) 437, 518.

—— (assignment of, is an equitable lien). 1 Ves. 162.

—— (an annuity payable out of, is a charge upon the land). 5 Paige (N. Y.) 461.

—— (when a portion should be raised from). 1 Atk. 550.

—— (portions to be raised by, do not carry interest). 2 P. Wms. 666.

—— (a trust to raise portions out of). 2 Vern. 310.

—— (in English lands clauses act). L. R. 11 Eq. Cas. 15, 23.

—— (in married woman's property act). 13 Ch. D. 504.

—— (in a devise, include the whole interest). 6 Johns. (N. Y.) Ch. 70, 73; 11 Wend. (N. Y.) 298; 17 Id. 393; 4 Bing. 505; 12 East 455; 1 Meriv. 232, 233; 5 Mod. 63, 101; 1 Salk. 228; 1 T. R. 193; 2 Id. 444; 7 Id. 652; 2 Vent. 357; 1 Vern. 104; 2 Id. 26; 1 Ves. Sr. 42; 2 Ves. & B. 65; 4 Com. Dig. 154.

RENTS IN ARREAR, (in a will). 6 Pick. (Mass.) 63.

RENTS, ISSUES AND PROFITS, (defined). 26 Vt. 741, 746.

—— (portions to be raised from, may not be raised by sale). 3 P. Wms. 1.

—— (in a deed). 8 East 263.

—— (in a will). 2 Ld. Raym. 877; 3 Sim. 398.

RENTS OF ASSISE.—The certain and determined rents of the freeholders and ancient copyholders of manors are called "rents of assise," apparently because they were assised or made certain, and so distinguished from a *redditus mobilis*, which was a variable or fluctuating rent. (8 Cruise Dig. 314).—*Brown.*

RENTS OF LAND, (in a will). Cro. Jac. 104.

RENTS, PROFITS AND INCOME OF LAND, (in a will). 1 Ashm. (Pa.) 137.

RENTS RESOLUTE.—Rents anciently payable to the crown from the lands of abbeys and religious houses; and after their dissolution, notwithstanding that the lands were demised to others, yet the rents were still reserved and made payable again to the crown. —*Cowell*.

RENUNCIATION.—The act of giving up a right. See RENOUNCE.

RENUNCIATION, (of executor). 4 Pick. (Mass.) 44; 16 Serg. & R. (Pa.) 416; Toll. Ex. 41, 42.

— (of trustee). 5 Paige (N. Y.) 559; 1 Myl. & K. 195.

REPACKING BEEF, (what is). 17 Serg. & R. (Pa.) 137.

REPAIR, (liability of insurers to). 7 Cow. (N. Y.) 580.

— (in a contract). 128 Mass. 280.

— (in a covenant). 2 N. Y. 86; 6 Wheel. Am. C. L. 384; Amb. 619; 1 Burr. 287; 4 Campb.

277; 2 Chit. 608; Cro. Jac. 645; Dyer 313 b, 324 a; 3 Lev. 264; 1 Nev. & M. 6; 1 Ry. & M. 357; 2

Saund. 420, 422 n.; 2 Stark. 293; 5 Taunt. 90; 1 Vern. 87; 2 Id. 103, 275; 3 Com. Dig. 280;

Com. L. & T. 185, 202, 210; 7 Petersd. Abr. 203 n.; 5 Shep. Touch. 173.

— (in a statute). 8 Allen (Mass.) 58.

REPAIR A BRIDGE, (a power to raise money to). 1 Ld. Raym. 580.

— (in a covenant). 6 T. R. 750.

REPAIR A BUILDING, (defined). 2 Rawle (Pa.) 264.

REPAIR A PUBLIC BRIDGE, (does not include the widening). 4 Barn. & C. 670; 7 Dowl. & Ry. 147.

REPAIR AND KEEP IN PROPER REPAIR, (a covenant to). 1 Barn. & Ald. 584.

REPAIR AND REGULATE, (in city charter.) 54 Mo. 172.

REPAIR, COVENANT TO.—This covenant (when in its usual form) binds the lessee as from the date of the execution of the lease and not sooner (although the lease may have commenced sooner); and it runs with the land. As applying to houses it obliges the tenant to keep the house in substantial repair, *having regard to the age and character of the building, i. e.* having regard to the condition of the premises at the time when the covenant began to operate. (*Walker v. Hatton*, 10 Mees. & W. 258.)—*Brown*.

REPAIR, DAMAGE BY FIRE ONLY EXCEPTED, (in a covenant). 3 Anstr. 687.

REPAIR, UPHOLD AND MAINTAIN, (in a covenant). 1 Car. & P. 265.

REPAIRING, (equivalent to "restoring"). 3 Yeates (Pa.) 374.

REPAIRING A COUNTY BRIDGE, (in a statute). 3 Bos. & P. 354.

REPAIRING BRIDGES, (includes a power to widen). 6 T. R. 194.

REPAIRING, EFFECTUALLY, (not equivalent to "effectually rebuilding and repairing"). 2 Barn. & Ad. 896.

REPAIRS.—In the absence of express agreement to repair, a tenant from year to year is bound to keep the demised premises (if houses) wind and water tight, and (whether lands or houses) to use them in a tenant-like manner, and generally to replace breakages; and that is all. Tenants for a term of years, as for life, are liable even for permissive waste, *semble* *Harnett v. Maitland*, 16 Mees. & W. 257; *Yellowley v. Gower*, 11 Exch. 294.

REPAIRS, (what are). 9 C. E. Gr. (N. J.) 359.

— (what are not). 1 McCord (S. C.) 517.

— (in a statute). 110 Mass. 305; 21 Barb. (N. Y.) 484.

— (tenant at will not liable for general). *Holt N. P. 7*.

REPAIRS TO A STREET, (what are not). 29 How. (N. Y.) Pr. 429.

REPARATION.—The redress of an injury; amends for a wrong done.

REPARATION, (in a will). L. R. 6 H. L. 2.

REPARATIONE FACIENDA.—See DE REPARATIONE FACIENDA.

REPATRIATION takes place when a person who has been expatriated regains his nationality. Under § 8 of the English Naturalization Act, 1870, a natural-born British subject who has become a statutory alien (*i. e.* expatriated himself) under the act, may repatriate himself in the same way as an ordinary alien may obtain a certificate of naturalization. This word does not seem to have been recognized, as yet, as a term of American law, but the above doctrine would seem to be equally applicable here, on principle. See NATURALIZATION.

REPAY, (in a bond). 1 Cro. 729.

REPEAL.—A revocation or abrogation of a hitherto existing law by the passing of a subsequent statute, which either expressly abrogates the former law by direct reference to it (express repeal) or is so clearly inconsistent with it that both statutes cannot stand together (implied repeal).

REPEAL, (of a statute, what is). 5 Pick. (Mass.) 168.

— (of a statute by implication, what amounts to). 2 Barn. & Ad. 818; 1 Price 438.

— (of a statute, after sentence of condemnation in admiralty). 5 Cranch (U. S.) 281; 6 Id. 88; 3 Dall. (U. S.) 277; 1 Wash. (U. S.) 84.

— (of an act of incorporation). 4 Gill & J. (Md.) 1.

— (of repealing law, effect on pending prosecutions). 11 Pick. (Mass.) 350.

Repellitur a sacramento infamis (Bract. 185): An infamous person is repelled from an oath, i. e. is incompetent to testify on oath. Abrogated by Lord Denman's Act (6 and 7 Vict. c. 85) and more or less relaxed by statute in the different States.

REPERTORY.—In the French law, a classified inventory.

REPETITION.—In the civil law, a recovery of money paid under mistake.

REPETITUM NAMUM.—A second or reciprocal distress, in lieu of the first which was eloidal.

REPETUNDÆ, or PECUNIÆ REPETUNDÆ.—The term used to designate such sums of money as the *socii* of the Roman state, or individuals, claimed to recover from *Magistratus, Judices, or Publici Curatores*, which they had improperly taken or received in the *provincia*, or in the *Urbs Roma*, either in the discharge of their *jurisdiction*, or in their capacity of *Judices*, or in respect of any other public function. Sometimes the word *repetundæ* was used to express the illegal act for which compensation was sought, as in the phrase, "*Repetundarum insinulari damnari*," and *pecuniæ* meant, not only money, but anything that had value. Original inquiry was made into this offense, *extra ordinem ex senatus consulto*, as appears from the case of P. Furius Philus and M. Matienus, who were accused of it by the *Hispani*. (Smith Dict. Antiq.)—*Wharton*.

REPLEADER.—In the common law practice judgment of replender is given in an action when the pleadings have failed to raise a definite and material issue. (See PLEADING.) Its effect is that the pleadings are begun again at the point where the defect first occurred. Chit. Gen. Pr. 1553.

REPLEGIARE.—To redeem a thing detained or taken by another, by giving sureties.

REPLEGIARE DE AVERIIS.—A writ brought by one whose cattle were distrained or put in pound, on any cause, by any person, on

surety given to the sheriff to prosecute or answer an action.—*F. N. B.* 68.

REPLEGIARI FACIAS.—The original writ out of Chancery commencing an action of replevin. It was superseded by the Statute of Marlbridge. 52 Hen. III. c. 21.

REPLETION.—In the canon law, where the revenue of a benefice is sufficient to fill or occupy the whole right or title of the graduate who holds it.

REPLEVIABLE, or REPLEVISABLE.—Property is said to be repleviable or replevisable when proceedings in replevin may be resorted to for the purpose of trying the right to such property. Thus, goods taken under a distress are repleviable, for the validity of the taking may be tried in an action of replevin; but goods delivered to a carrier and unjustly detained are not repleviable, for the unjust detention of goods delivered on a contract is not an injury to which the action of replevin applies, but forms the ground of an action of detinue or trover. (Galloway v. Bird, 4 Bing. 299; Mennie v. Blake, 6 El. & B. 842.)—*Brown*.

REPLEVIN—REPLEVISOR—REPLEVY.—OLD-FRENCH: *pleige* or *piege* (Britt. 55 a) (law LATIN, *plegius*), a pledge or bail; *plevine* (Id. 54 b), a giving security, *plevir* (law LATIN, *plegiare*), to pledge. The most probable etymology is that of Diez (2 Grimm 401), who derives the phrase *plevir la fey* (Cf. *plevine par sa fey*, Britt. 180 a), to pledge one's word (afterwards shortened into *plevir*), from *præbere fidem*, *pleige* from *præbium*. Replevin, therefore, is regaining possession by giving security (*plevine*). Co. Litt. 145 b.

Replevin is the remedy which, in America, may be adopted by a person in almost all cases in which chattels are unlawfully taken from him; but it is not often adopted in England, except in cases of wrongful distress for rent or damage fensant, when it is brought for the purpose of trying the legality of the distress; it may also be used to decide a question of title to land or other hereditaments under the English practice. In the code States the old common law action of replevin has been abolished, and the provisional remedy "claim and delivery" is in use. But even in these States the name "replevin" is still in use for want of a better nomenclature.* See DISTRESS.

*In the present English practice, the first step is for the replevisor or distrainee (i. e. the person whose goods have been distrained) to obtain a replevy of the goods, which he does by procuring from the registrar of the county court of

the district a warrant directing the high bailiff to cause the goods to be delivered to him: this is granted on the replevisor giving security (usually a bond with two sureties) to commence and prosecute an action for the wrongful taking

REPLEVISABLE.—See REPLEVIABLE.

REPLEVISH.—In old English law, to let one to mainprise upon surety.—*Cowell.*

REPLEVY.—See REPLEVIN.

REPLICATION. —

§ 1. The pleading filed or delivered by the plaintiff in answer to the defendant's plea in an action at law, or his answer in chancery. In chancery, however, the replication has been for many years merely a joinder of issue (*q. v.*), special replications (which were used where the defendant introduced new matter into his plea or answer) having been superseded by the practice of amending the bill. *Mitt. Pl. 821; Dan. Ch. Pr. 731 et seq. See AMENDMENT; PLEADING; REPLY.*

§ 2. In matrimonial suits in the English Probate, Divorce and Admiralty Division of the High Court, the replication is the pleading filed by the petitioner in reply to the answer of the respondent. *Browne Div. 228.*

§ 3. Criminal practice.—In English criminal prosecutions by indictment or information, the replication is the pleading following the plea (*q. v.*) *Arch. Cr. Pl. 135. See TRAVERSE.*

REPLY.—

§ 1. In its general sense, a reply is what the plaintiff, petitioner or other person who has instituted a proceeding says in answer to the defendant's case.

§ 2. In pleading.—In an action in the English High Court, or in an action brought in one of the code States, the reply is the pleading delivered in answer to the defendant's statement of defense, or answer, as the case may be. Usually the reply is delivered by the plaintiff, but in English practice, if the defendant has set up a counter-claim against any person other than the plaintiff, the answer of that person to the counter-claim is called a "reply" (*Rules of Court. xxii. 8.*), although it is rather in the nature of a statement of defense. In simple actions the reply is usually a mere joinder of issue (*q. v.*), and is not allowed in the code States, unless new matter, in the nature of a set-off or counter-claim, is set up in the answer, or special reasons exist prompting the court to order a reply.

§ 3. On trial, or argument.—When a case is tried or argued in court, the speech or argument of the plaintiff in answer to that of the defendant, is called his "reply." In some cases the plaintiff is not entitled to reply. *See OPENING; RIGHT TO BEGIN; TRIAL.*

As to affidavits in reply, *see AFFIDAVIT, § 2.*

§ 4. Under the practice of the chancery and common law courts, to reply is to file or deliver a replication (*q. v.*)

against the distrainer, either in the county court or in the High Court, and to return the goods to the distrainer if a return shall be adjudged. (*Sm. Ac. 434; Chit. Gen. Pr. 1081 et seq.; Poll. C. C. Pr. 282 et seq.; Woodf. Land. & T. 454 et seq.; Stat. 19 and 20 Vict. c. 108.*) Under the old practice, if this action (which is called an "action of replevin") was brought in one of the superior courts of common law, proceedings up to declaration were the same as in an ordinary action, the replevisor being the plaintiff (*see ACTOR*); but where, as was usually the case, the defendant claimed a return of the goods replevied, the subsequent pleadings were peculiar. If the defendant insisted that they were lawfully taken by him, he either made *avowry*, *i. e.* he avowed taking the distress in his own right, and set forth the reason of it (as for rent in arrear), or he made *conuissance* or *cognizance*, *i. e.* he acknowledged the taking, but insisted that it was lawful, as he did it by the command of one who had a right to distrain; (2 *Bl. Com. 150*;) the plaintiff's next pleading was called a "plea in bar," that of the defendant a "replication," and so on. (*Sm. Ac. 439; Tidd Pr. 645.*) Under the present practice, the pleadings in an action of replevin are similar to those in ordinary cases. (*Rules of Court, xix. 1; Woodf. Land. & T. 469, 471; Arch. Pr. 890. See PLEADING.*)

If the plaintiff obtains judgment, he retains the goods and is awarded damages for the unlawful taking; if the defendant is successful, he obtains judgment for a return of the goods taken, formerly enforceable by a writ called "*de retorno habendo*," (*Sm. Ac. 440*;) now by a writ of delivery (*q. v.*) *Woodf. Land. & T. 482. See, also, WRIT OF RECAPTION.*

Formerly, the only remedy in cases of wrongful distress was the writ of replevin (*replegiari facias*), under which the proceedings were in the sheriff's county court; but by 52 Hen. III. c. 21, the sheriff was authorized to grant replevins without this writ. If the goods had been eloiigned, the replevisor might have a writ of *capias in withernam* (*q. v.*), under which the sheriff took the distrainer's own goods as a punishment. If the plaintiff in an action of replevin was nonsuited he was allowed a writ of second deliverance, under which the goods were again delivered to him; but if he was nonsuited in the second action, the defendant obtained a writ of return irreplevisable, which was an absolute bar to the plaintiff's claim. (3 *Bl. Com. 147 et seq.; Chit. Gen. Pr. 1086. Woodf. Land. & T. 485.*) The two latter proceedings are, it would seem, impliedly abolished by the new rule respecting nonsuits. *Rules of Court, xli. 6.*

REPLY, RIGHT TO.—The person who has the right to begin at the trial of any action has also, as a general rule, the right to reply, that is to say, assuming that the opposite party adduces any evidence.

REPORT.—

§ 1. **Referee.**—When a question is referred to a referee his decision is given in the form of a report to the court. *See* REFER, § 3 *et seq.*; REFEREE.

§ 2. **Masters or commissioners in lunacy** embody the results of their inquiries as to the estates or persons of lunatics in the form of reports, which require to be confirmed before they can be carried into effect. *See* STATE OF FACTS. As to reports in English admiralty actions, *see* REGISTRAR AND MERCHANTS.

§ 3. **Master in Chancery.**—Under the practice in Courts of Chancery, when an inquiry is referred to the master, he gives the result in a report, which is filed in the proper office. In more modern English practice, chief clerks' certificates, petitions, &c., were also so filed. *Dan. Ch. Pr. index, s. v.* *See* CERTIFICATE, p. 185, n. (3); MASTERS, § 3.

§ 4. **Report of judicial committee.**—The judgment of the judicial committee of the Privy Council on an appeal or reference is technically a report to the queen in council, giving the opinion of the court on the question involved in the case. *Macph. Jud. Com.* 148. *See* JUDICIAL COMMITTEE; REFER, § 8.

§ 5. **Law reports.**—Report also signifies a published account of a legal proceeding, giving a statement of the facts, the arguments on both sides, or the cases cited by counsel, and the reasons the court gave for its judgment. Reports edited by lawyers, and published with the reporter's name, or otherwise sanctioned by persons of standing in the profession, are cited in argument as precedents (1 *Bl. Com.* 71; *Co. Litt.* 293a), and are of more or less authority according to the reputation of the reporter and of the judges whose decisions are reported. *See* YEAR-BOOKS.

A list of the reports, English and Amer-

ican, will be found in the table of abbreviations at the beginning of the present work.

REPORT OF COMMITTEE.—The report of a legislative committee is that communication which the chairman of the committee makes to the house at the close of the investigation upon which it has been engaged.

REPORT OFFICE.—A department of the English Court of Chancery. The suitors' account there is discontinued by the 15 and 16 *Vict. c. 87*, § 36.

REPORTER.—A person who reports the decisions upon questions of law in the cases adjudged in the several courts of law and equity.

REPORTS OF CASES.—*See* REPORT, § 5.

REPOSITION OF THE FOREST.—A re-putting; a re-afforesting.—*Manno.*

REPOSITORY.—A storehouse or place wherein things are kept; a warehouse. *Cro. Car.* 555.

REPRESENT — REPRESENTATION.—

§ 1. **By agent, heir, &c.**—One person is said to represent another when he takes his place. Thus, an agent represents his principal, an heir his ancestor, an executor his testator, and an administrator the intestate whose estate he administers. *See* REPRESENTATIVE. As to parliamentary representation, *see* HOUSE OF COMMONS; HOUSE OF LORDS.

§ 2. **By descendants.**—In the law of intestacy, the rule of representation is that rule of law by which the children or other descendants of a deceased person, who, if he had lived, would have taken property by virtue of an intestacy, stand in his place, so as to take the property which he would have taken if he had lived. As regards realty, the rule of representation is universal, namely, that all lineal descendants represent their ancestor. (*See* the fourth canon of descent, DESCENT, § 7.)* In

* As to gavelkind land, *see* *Hook v. Hook*, 1 *Hemm. & M.* 43.

There is also another and, in the opinion of many, an incorrect use of the term "representation" in the English law of descent. If A. acquires land by purchase and dies intestate, leaving two daughters, B. and C., his land de-

scends to them as coparceners. If B. dies intestate, leaving a son D., the question arises to whom will her share descend? The Inheritance Act says that in case of a descent, the title to inherit shall be traced from the purchaser, who in this case is A., so that the provisions of the act would seem to be fulfilled by making B.'s

the case of personalty, representation only takes place (1) where the intestate has left children and grandchildren by deceased children, in which case the grandchildren stand in their parents' place, and (2) where the intestate has left a mother, or a brother, or sister, and also nephews or nieces by a deceased brother or sister, in which case the nephews or nieces take their parents' share. *See* DISTRIBUTION; NEXT OF KIN; PER CAPITA.

§ 3. **Contract.**—In the law of contracts, a representation is a statement or assertion made by one party to the other, before or at the time of the contract, of some matter or circumstance relating to it. In ordinary contracts a representation as such has no legal effect, even if untrue, and even if the person making it knew it to be so. Thus, if a vendor of goods simply represents them as worth a high price, while in fact they are not, this gives the purchaser no right either to rescind the contract or to bring an action of damages. (*See* CAVEAT EMPTOR.) But a representation may take the form of a warranty or condition, or may amount to fraudulent or negligent misrepresentation, all of which have important legal effects. *Behn v. Burness*, 3 Best & S. 751; *Poll. Cont.* 445, 476. *See* the respective titles.

§ 4. **Insurance.**—Contracts of insurance being contracts *uberrimæ fidei* (*q. v.*), representations which relate to material facts connected with an insurance must be complied with, but a substantial compliance is sufficient. Thus, where the assured asserted that his vessel mounted twelve guns and twenty men, and the ship sailed with less than this number of men and guns, but carried in addition a number of boys and swivels, which made her force in fact greater than that stated, it was held that, this being a representation and not a

warranty, and having been substantially complied with, the underwriters were liable. *Maud & P. Mer. Sh.* 395, citing *Pawson v. Watson*, 2 Cowp. 785.

§ 5. **Public Worship Act.**—Under the English Public Worship Act, 1874, complaints against incumbents, &c., on matters within that act, are made by a document called a "representation," containing a statement of the nature of complaint, and signed by the person or persons making it. § 8. *See* PUBLIC WORSHIP REGULATION ACT.

REPRESENTATION, (in insurance law). 7 Cranch (U. S.) 506; 16 Am. Dec. 463 n.

— (distinguished from "warranty"). 3 Woodb. & M. (U. S.) 529; 21 Conn. 19; 31 Me. 219; 12 Cush. (Mass.) 416; 10 Pick. (Mass.) 535; 5 Vt. (N. J.) 244; 1 Edw. (N. Y.) 64, 74; 1 Hill (N. Y.) 510; 6 Wend. (N. Y.) 488; 13 Id. 92; 16 Id. 481; 48 Pa. St. 367; 4 R. I. 141; 6 Wheel. Am. C. L. 102; 1 T. R. 343.

REPRESENTATION, FALSE, (what constitutes). 7 Cranch (U. S.) 506.

REPRESENTATIVE.—

§ 1 **Personal—Real.**—A representative is a person who represents or takes the place of another. The executor or administrator of a deceased person is called his "personal representative," because he represents him in respect of his personal estate. For a similar reason an heir is sometimes called the "real representative" of his ancestor.

§ 2. **Representative action or suit.**—A representative action or suit is one brought by a member of a class of persons on behalf of himself and the other members of the class. In the proceedings before judgment the plaintiff is, as a rule, *dominus litis* (*q. v.*), and may discontinue or compromise the action as he pleases; therefore a member of the class who is dissatisfied with an order obtained by the plaintiff cannot appeal against it; he may, however, apply to be made a defendant, and, in a proper case, might obtain the conduct of the proceedings. (*Watson v.*

share descend to C. and D. in equal shares, D. standing in the place of his deceased mother. (1 Hayes Conv. 314.) No doubt this result would be absurd, the obvious conclusion being that the legislature did not contemplate such a case. It has, in fact, been decided that in the case above supposed B's share descends to D. (*Cooper v. France*, 14 Jur. 214; 19 L. J., Ch. 313.) No reasons are given for the decision except that the same results would have followed under the old law, and that the act did not intend to make an alteration. In addition to this reason, however, it is argued by Mr. Joshua Williams (R.

P. 113, and App. B.; *Wms. Seis.* 79,) that the case is governed by the rule of representation, D. standing in the place of his deceased mother. It is quite clear that the rule of representation referred to is not the ordinary rule stated in the text, because that only applies to the case of a person pre-deceasing the intestate. It is true that under the old law, in certain cases, if a coparcener died intestate her share descended to her issue, but this was by virtue of a special rule which has never been adequately explained. *Solicitors' Journal*, February 23d, 1878.

(Cave, 17 Ch. D. 19.) As soon as judgment is given for the plaintiff he ceases to be *dominus litis*, and all members of the class who are willing to contribute to the expenses of the suit may join in, and take the benefit of, the subsequent proceedings. Dan. Ch. Pr. 215, 694.

REPRESENTATIVE, (defined). 28 Mich. 223; 16 Abb. (N. Y.) Pr. 92; 39 Barb. (N. Y.) 516. — (in practice act). 26 Cal. 23.

REPRESENTATIVE OF A DECEASED PERSON, (means executors and administrators). 12 Abb. (N. Y.) Pr. 1.

REPRESENTATIVE OF THE DECEASED, (in a statute). 34 Barb. (N. Y.) 434.

REPRESENTATIVE OF THE DEVISOR, (in a statute). 40 Barb. (N. Y.) 537.

REPRESENTATIVE PEERS.—The representative peers are those who, at the commencement of every new parliament, are elected to represent Scotland and Ireland in the British House of Lords, namely, sixteen for the former, and twenty-eight for the latter country. At the union of Scotland with England in 1707, and of Ireland in 1800, the peers of those two countries were not admitted *en masse* to seats in the British parliament, but were allowed to elect a certain number of their body to represent them therein; hence the term "representative peers." The Scottish representative peers must have descended from ancestors who were peers at the time of the union.—*Brown*. See HOUSE OF LORDS.

REPRESENTATIVES, (equivalent to "descendants" in a will). 6 Sim. 49.

— (in insurance policy). 99 Mass. 342.

— (in a statute). 8 C. E. Gr. (N. J.) 575.

REPRESENTATIVES, LEGAL, (equivalent to "executors and administrators"). 118 Mass. 198.

— (in statute, 1823, c. 140). 11 Pick. (Mass.) 173.

REPRESENTATIVES OF A DECEASED PERSON, (in a statute). 37 Barb. (N. Y.) 258.

REPRESENTATIVES, THEIR, (in a statute). 6 Barn. & C. 169, 176.

REPRIEVE.—In criminal procedure, a reprieve is the withdrawal of a sentence for a time, whereby the execution of it is suspended. It may be granted either by the court or by the executive. In two cases the court is bound to grant a reprieve, namely, where a female prisoner under sentence is pregnant, and where a prisoner becomes insane after judgment. Arch. Cr. Pl. 187; 4 Bl. Com. 394. See JURY, § 10.

REPRISAL is the same thing as recapitulation (*q. v.*)

REPRISALS.—

§ 1. **Special**.—In international law, reprisals include every species of means, short of war, employed by one State to procure redress for an injury committed by another State. The term therefore includes embargo and retorsion (*q. v.*) Reprisals are negative when a State refuses to fulfill an obligation, and positive when they consist in seizing the subjects or property of the offending State. Man. Int. Law 145.

§ 2. **General**.—The reprisals above described are sometimes called "special," as opposed to "general reprisals," which are only used in time of war, and consist in authorizing any individuals whatever, whether suffering from private grievances or not, to act against the subjects of the opposed State. Man. Int. Law 155. See LETTERS OF MARQUE; PRIVATEERS.

REPRISES.—Deductions and payments out of a manor or lands, as rent charges, annuities, &c.—*Cowell*.

REPRISES, (defined). 3 Pa. 475.

— (in marriage settlement). 2 Atk. 545.

REPROBATION.—In ecclesiastical law, the propounding of exceptions either to facts, persons or things.

REP-SILVER.—Money anciently paid by servile tenants to their lord, to be quit of the duty of reaping his corn.—*Cowell*.

REPUBLIC.—(1) A commonwealth; a form of government the administration of which is open to all the citizens. (2) The State; the mass of the people independent of the form of government of the State.

Republicæ interest, voluntates defunctorum effectum sortiri: It concerns the State that the wills of the dead should have their effect.

REPUBLICAN GOVERNMENT.—A government of and by the people, as distinguished from a monarchical or aristocratic government.

REPUBLICATION of a will is where it is re-executed by the testator. This is generally done when the will has been revoked and the testator wishes to revive it. Wms. Ex. 198. See PUBLICATION; REVIVAL.

REPUBLICATION, (of a will, what is). 1 Hill (N. Y.) 590.

REPUDIATION.—(1) The putting away of a wife or of a woman betrothed. (2) The renunciation of a right or obligation. (3) The refusal to accept a benefice.

A plaintiff who recovers lands in ejectment, is not liable to the charges or mortgages (if any) created thereon by the defendant, inasmuch as he recovers by adverse title. In such a case he need not even repudiate the charges or mortgages. Similarly, when a sovereign succeeding to an empire or kingdom adversely to the previous ruling family, (*e.g.* when Will. III. succeeded to Jac. II.,) the right to repudiation of the public debt created by his predecessors undoubtedly arises, as it arose in 1688; and again, as it arose upon the termination of the war of secession between the Federals and the Confederates in the United States.—*Brown*.

REPUGNANCY.—Everything that is repugnant to, *i. e.* inconsistent with, plain common sense—as that is ascertained by the aggregate and not the merely individual mind—is of necessity absolutely void in law; likewise every attempted adjunct to a principal subject-matter, when the adjunct is inconsistent with the essential nature of the principal matter.

REPUGNANT means contrary to or inconsistent with. Thus, if A. grants land to B. in fee, upon condition that he shall not alien it, this condition is “repugnant to the estate,” *i. e.* inconsistent with the nature of a fee-simple, and therefore void. Co. Litt. 206 b.

As to repugnant gifts by deed or will, see **INCONSISTENCY**, § 1.

REPURCHASE, (distinguished from “redemption”). 3 Atk. 278, 280.

Reputatio est vulgaris opinio ubi non est veritas. Et vulgaris opinio est duplex: scil.—Opinio vulgaris orta inter graves et discretos homines, et quæ vulgum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis (4 Co. 107): Reputation is common opinion where there is not truth. And common opinion is of two kinds, to wit: common reputation arising among grave and sensible men, and which has the appearance of truth; and mere opinion arising among foolish and ignorant men, without any appearance of truth.

REPUTATION.—

§ 1. In the law of evidence, matters of public and general interest, such as the boundaries of counties or towns, rights of common, claims of highway, &c., are allowed to be proved by general reputation, *e. g.* by the declaration of deceased persons made *ante litem motam*, by old documents, &c., notwithstanding the general rule against secondary evidence. Best Ev. 632.

§ 2. So evidence of the general reputation of a family, as proved by a surviving member of it, is admissible in questions of pedigree. *Id.* 634.

As to a manor by reputation, see **REPUTED MANOR**.

As to personal reputation, see **LIBEL**; **CHARACTER**; **SLANDER**.

REPUTATION, (defined). 1 Den. (N. Y.) 347, 365; 3 Crim. L. Mag. 340.

—— (what is evidence of). 22 Minn. 407.
—— (is not character). 8 Barb. (N. Y.) 603.

REPUTED.—Accepted by general, vulgar, or public opinion. Thus, land may be reputed part of a manor, though not really so, and a certain district may be reputed a parish or a manor, or be a parish or a manor in reputation, although it is in reality no parish or manor at all.—*Brown*.

REPUTED MANOR.—Whenever the demesne lands and the services become absolutely separated, the manor ceases to be a manor in reality, although it may (and usually does) continue to be a manor in reputation, and is then called a “reputed manor,” and it is also sometimes called a “seignory in gross.” So, likewise, if all the frank tenements of the manor escheat to or become otherwise vested in the lord, the manor ceases as a strict manor, and becomes a manor in reputation only. (*Soane v. Ireland*, 10 East 259.) Reputation alone, and without proof of the actual exercise of manorial rights, is admissible evidence, to prove the existence of a manor; and a manor by reputation is sufficient to entitle the lord to the manorial estates. (*Steel v. Prickett*, 2 Sta. 466; *Curson v. Lomas*, 5 Esp. 60.)—*Brown*.

REPUTED OWNERS, (in bankrupt act). 9 East 237, 239.

REPUTED OWNERSHIP.—The doctrine of reputed ownership was first introduced into the English bankrupt laws by the Stat. 21 Jac. I. c. 19, § 11, with the object of protecting the creditors of a trader from the consequences of the false credit which he might acquire by being suffered to have in his possession, as apparent owner, property which does not really be-

long to him. If the circumstances under which the property is in the trader's possession, order or disposition, are such as to lead to a fair and reasonable inference amongst persons likely to have dealings with him, that he is the owner, and if the real owner is a consenting party, then on the trader becoming bankrupt, that property is divisible among his creditors. (Robs. Bankr. 412, 413; *In re Blanshard*, 8 Ch. D. 601.) The doctrine does not apply to property comprised in a registered bill of sale, (Bankr. Act, 1869, s. 15, § 5; Bills of Sale Act, 1878, s. 20,) nor does it apply in cases where there is a custom or usage of trade rebutting the presumption of ownership. *Ex parte Lovering*, L. R. 9 Ch. 621. See ORDER AND DISPOSITION.

REPUTED THIEVES, (in a statute). 2 Car. & P. 565; Moo. & M. 37.

REQUEST.—

§ 1. A request may give rise to an implied or tacit promise. Thus, if I request a workman to do work for me, I tacitly agree to pay him for it. And if I request a person to do something for me which would not of itself give rise to a tacit promise to pay him, and after he has done it I promise to pay him, this promise couples itself with the antecedent request and makes a good contract. Chit. Cont. 49; Poll. Cont. (2 edit.) 28.

§ 2 Quasi-request.—In some cases a request will itself be implied by the law (*quasi*-request): thus, if A. has been compelled to do that which B. is legally compellable to do, the law will imply a request by B to A. to do the act. Chit. Cont. 50. See CONTRACT, § 5 *et seq.*; PROMISE; QUASI-CONTRACT; see, also, COURTS OF REQUEST; LETTERS OF REQUEST.

REQUEST, (synonymous with "require"). 8 Hun (N. Y.) 300.

— (agreement to make an assignment on). 3 Mod. 295.

— (in a will). Amb. 520 n. (2); 3 Atk. 484; 1 Bro. Ch. 489; 2 Id. 226; 2 Cox Ch. 396; 10 Ves. 536; 17 Id. 255.

REQUEST FOR THE DELIVERY OF GOODS, (what is). 1 Moo. C. C. 300.

REQUEST, IT IS MY DYING, (in a will). 7 Price 220.

REQUEST NOTES.—In English law, applications to obtain a permit for removing excisable articles.

REQUESTED, WHEN THERETO, (in a condition of a bond). 2 Aik. (Vt.) 54.

REQUIRED, (in a statute). 2 T. R. 1.

REQUIRED, WHEN LAWFULLY, (in a covenant). 4 Watts (Pa.) 265.

REQUISITION.—

§ 1. In inter-state extradition.—A demand or request in writing made by the governor of one State upon the governor of a sister State, for the surrender of a fugitive from justice, under the provisions of the constitution and laws of the United States relative to extradition of criminals.

§ 2. In the Scotch law, a demand made by a creditor, that a debt be paid or an obligation fulfilled.—*Bell Dict.*

REQUISITIONS ON TITLE.—When a contract for the sale of real property has been entered into in England, and the vendor has delivered the abstract of title to the purchaser, the latter goes through the abstract, and if there are any defects in or questions as to the vendor's title, he puts his objections into writing and delivers them to the vendor. These are called "requisitions," because they require the vendor to remove the defects or doubts pointed out. A formal contract of sale always stipulates that the requisitions shall be made within a certain time after the delivery of the abstract. It also generally stipulates that the title shall commence with a certain document, and that no requisitions shall be made in respect of the earlier title; not unfrequently it is provided that no requisitions shall be made in respect of some specified defect in the title which the vendor is unable to remove. Greenw. Conv. (5 edit.) 7, 31 *et seq.*; Dart Vend. 124 *et seq.* See VENDORS AND PURCHASERS.

RERE-FIEFS.—Inferior feudatories in Scotland. 1 Steph. Com. (7 edit.) 180.

Rerum ordo confunditur, si unicusque jurisdictione non servetur (4 Inst. Proem.): The order of things is confounded if every one preserve not his jurisdiction.

Rerum progressus ostendunt multa, quæ in initio præcaveri seu prævideri non possunt (6 Co. 40): The progress of events shows many things which, at the beginning, could not be guarded against or foreseen. Thus, according to Coke, "many mischiefs arise on the change of a maxim and rule of the common law, which those who altered it could not see when they made the change."

Rerum suarum quilibet est moderator et arbiter (Co. Litt. 223): Every one is the moderator and arbiter of his own affairs.

RES.—

§ 1. All physical and metaphysical existences in which persons may claim a right. See Sand. Just. (5 edit.) 87, and Cum. C. L. 59.

§ 2. In an admiralty action *in rem*, the *res* is the ship, cargo or other property proceeded against. Rosc. Adm. 187. See ACTION, § 12; ARREST, § 6; BAIL, § 5; IN PERSONAM, § 5.

RES ACCESSORIA.—An accessory thing; something belonging to, or connected with, the principal thing.

Res accessoria sequitur rem principalem (Broom Max. (5 edit.) 491): The accessory follows the principal.

RES COMMUNES.—Common or public things which may be used by every one; such are light, air, running water, &c.

Res denominatur a principali parte (9 Co 47): The thing is named from its principal part.

Res est misera ubi jus est vagum et incertum (2 Salk. 512): It is a wretched state of things when law is vague and mutable.

RES FUNGIBILES.—Fungible things. See **FUNGIBLES RES.**

RES FURTIVÆ.—In the Scotch law, stolen goods.—*Bell Dict.*

Res generalem habet significationem quia tam corporea quam incorporea, cujuscunque sunt generis, naturæ, sive speciei, comprehendit (3 Inst. 182): The word "thing" has a general signification, because it comprehends corporeal and incorporeal objects, of whatever nature, sort, or species.

RES GESTÆ.—The facts surrounding or accompanying a transaction which is the subject of legal proceedings. The phrase is chiefly used in the law of evidence, the rule being, that evidence of words used by a person may be admissible (notwithstanding the general rule against derivative evidence), on the ground that they form part of the *res gestæ*, provided that the act which they accompanied is itself admissible in evidence, and that they reflect light upon or qualify that act. (Best Ev. 663; *Wright v. Tatham*, 7 Ad. & E. 318; 5 Cl. & F. 670.) Therefore, where a woman went to be examined by a surgeon with a view to effecting a policy of insurance on her life, and a few days afterwards stated to a friend that she was ill when she went, and that she was afraid she would not live until the policy was made out, and then her husband could not get the money: evidence of these statements was held admissible in an action on the policy, on the ground that as the woman's previous statements to the surgeon were admissible in evidence, her statements to her friend were also admissible, being part of the *res gestæ*, i. e. as

following and explaining her previous statements. (*Aveson v. Lord Kinnaird*, 6 East 188.) Similarly on an indictment for treason in leading on a riotous mob, evidence of the cry of the mob is admissible, because it forms part of the *res gestæ*. Best Ev. 630.

RES GESTÆ, (defined). 46 Conn. 464; 3 Ga. 513.

— (what declarations are part of). 1 Gall. (U. S.) 172; 4 Wash. (U. S.) 492; 12 Wheat. (U. S.) 460; 3 Wheel. Am. C. L. 242.

RES INTEGRA.—A subject not yet decided on. An open question of law.

Res inter alios acta alteri nocere non debet (Co. Litt. 132): Things done between strangers ought not to injure one not a party. This rule means that persons are not to be prejudiced by the acts or words of others, to which they were neither party nor privy, and which they consequently had no power to prevent or control. In other words, a person is not to be affected by what is done behind his back. Best Ev. 150, 643.

RES IPSA LOQUITUR.—The thing speaks for itself. A phrase used in actions for injury by negligence where no proof of negligence is required beyond the accident itself, which is such as necessarily to involve negligence.

RES JUDICATA, (what constitutes). 12 Kan. 127.

— (what decisions are not). 6 Wheat. (U. S.) 563; 5 Johns. (N. Y.) Ch. 52; 14 Id. 63.

— (effect of). 3 Wheat. (U. S.) 216; 9 Id. 367.

— (conclusiveness of). 6 Wheat. (U. S.) 113; 1 Johns. (N. Y.) Ch. 91, 94.

Res judicata pro veritate accipitur (Co. Litt. 103): A thing adjudicated is received as true.

A judicial decision is conclusive until reversed, and its verity cannot be contradicted. (*See RECORD.*) But a judgment *inter partes* only binds the parties and privies to it; as regards other persons, it is *res inter alios judicata*. Best Ev. 734. See **IN PERSONAM**; **RES INTER ALIOS ACTA**.

RES MANCIPI.—In the civil law, things which might be sold and alienated.

RES NOVA.—A matter not yet decided. See **RES INTEGRA**.

RES NULLIUS.—A thing which has not an owner.

Res per pecuniam æstimatur, et non pecunia per rem (9 Co. 74): The value of a thing is estimated according to its worth in money, but the value of money is not estimated by reference to a thing.

Res perit domino: The loss falls on the owner.

RES PRIVATÆ.—Things belonging to private persons; private property.

Res profecto stulta est nequitiae modus (11 Co. 8b): There is no mean in wickedness.

RES PUBLICÆ.—Things belonging to the public; public property. Such as the sea, navigable rivers, highways, &c.

RES QUOTIDIANÆ.—Every-day matters; familiar subjects or questions.

RES RELIGIOSÆ.—Things pertaining to religion. Burial places.

Res sacra non recipit æstimationem (D. 1, 8, 9, 5): A sacred thing does not admit of valuation.

RES SACRÆ.—Sacred things. Things publicly consecrated to religious purposes.

RES SANCTÆ.—Holy things; things protected against injury by man. The walls of a city were *res sancte* among the Romans.

Res sua nemini servit (4 Macq. H. L. Cas. 151): No one can have a servitude over his own property.

RES UNIVERSITATIS.—Properly belonging to a city or municipal corporation.

RES, VARIETIES OF.—These have been variously divided and classified in law, *e. g.* in the following ways: (1) Corporeal and incorporeal things. (2) Movable and immovable. (3) *Res mancipi* and *res nec mancipi*. (4) Things real and things personal. (5) Things in possession and choses (*i. e.* things) in action. (6) Fungible things and things not fungible (*fungibiles vel non fungibiles*), and (7) *Res singule* (*i. e.* individual objects) and *universitates rerum* (*i. e.* aggregates of things). Also, persons are for some purposes and in certain respects regarded as things.—*Brown*.

RESALE is where a person who has sold goods or other property to a purchaser sells them again to some one else. Sometimes a vendor reserves the right of reselling if the purchaser commits default in payment of the purchase-money, and in some cases (*e. g.* on a sale of perishable articles) the vendor may do so without having reserved the right. (See *Benj. Sales* 643; *Chit. Cont.* 894; *Maclean v. Dunn*, 4 Bing. 722.) So, he may resell in any case if the buyer refuses to pay the price and take the property as by his contract he bound himself to do.

RESCUIT, or RECEIT.—An admission or receiving of a third person to plead his right in a cause already commenced between two other persons. 13 Rich. II. c. 17.

RESCUIT OF HOMAGE.—The lord's receiving homage of his tenant at his admission to the land. *Kit.* 148.

RESCIND—RESCISSION.—

§ 1. Rescission, or the act of rescinding, is where a contract is put an end to by the parties, or one of them.

§ 2. Thus, a contract is said to be rescinded where the parties agree that it is to be at an end, (*Chit. Cont.* 675; *Leake Cont.* 418; *James v. Cotton*, 7 Bing. 266.) or where one of the parties to a contract is entitled to avoid it by reason of the act or default of the other party, and elects to do so, either by giving notice of his election to the other party, by setting up the invalidity of the contract as a defense to proceedings taken by the other party, or by instituting proceedings to have the contract judicially set aside (judicial rescission). *Poll. Cont.* 489. See *RESTITUTIO IN INTEGRUM*.

§ 3. The most frequent instances of rescission by one party occur where there is fraud or mistake, (see *FRAUD*, § 17; *MISTAKE*, § 10,) and in certain cases where there is a continuing contract, and a failure of performance by one of the parties in an essential part of the contract. Thus, if a person who has contracted to supply a certain quantity of goods every month fails to supply a sufficient quantity the first month, the other party is entitled to rescind the contract. (*Chit. Cont.* 676.) Similarly, if a party to a contract fails to comply with a condition precedent, or by his own act makes the performance of the contract impossible, the other party may in general rescind the contract. *Ib.*; *Tully v. Howling*, 2 Q. B. D. 182. See *AFFIRM*, § 1.

RESCIND, (when means cancel). 53 Cal. 46.

RESCISSIONARY ACTION.—In the Scotch law, one to rescind or annul a deed or contract.

RESCOUS.—OLD FRENCH: *rescoure*, from *rescorre*, to release; late LATIN: *re-scutere*, to shake off again. *Diez Etym. Wortb. v. Scouterie*; *Muller Etym. Wortb. v. Rescue*.

Rescue (*q. v.*) *Litt.* § 287; *Co. Litt.* 47 b. 160 b; *Britt.* 108 b.

RESCRIPT.—(1) In the Roman law, an edict of the emperor, issued by him to some local governor upon the request and for the guidance of the latter in some difficulty or emergency which has arisen in his administration. It was in the first instance particular only, but it afforded a precedent for the magistrate's guidance in other similar cases which might arise. (2) At common law, a counterpart.

Rescriptum principis contra jus non valet (Reg. Civ. Dur.): The prince's rescript avails not against law.

RESCUE.—

§ 1. **Of person: Civil arrest.**—Rescue is the act of forcibly and knowingly freeing a person from an arrest or imprisonment. (4 Bl. Com. 181; Co. Litt. 160b.) In the case of a person arrested in a civil action, the rescuer is liable to an action by the plaintiff for the loss thereby caused to him, and to attachment for contempt of court. 8 Bl. Com. 146.

§ 2. **Criminal arrest.**—In the case of a prisoner arrested in criminal proceedings, the punishment for a rescue varies with the degree of the offense for which the person rescued was in custody. Steph. Cr. Dig. 88, 1 Russ. Cr. 582.

§ 3 **Of goods.**—Rescue also signifies the act of forcibly taking back goods which have been distrained and are being taken to the pound. If the distress was unlawful, the owner may lawfully rescue the goods, (Co. Litt. 47b, 160b; Woodf. Land. & T. 442; Sm. S. & C. L. & T. 225;) if the distress was lawful, the rescuer is liable to an action by the distrainor. (3 Bl. Com. 146; see, also, Litt. § 237. See DOUBLE DAMAGES; POUND, § 4; POUND-BREACH.) A rescue in law is where the cattle, &c., come again into the possession of the owner without his act, and he refuses to deliver them to the distrainor. Co. Litt. 161a.

RESCUE, (defined). 1 Chit. Cr. L. 62.

— (what constitutes). 17 Mass. 342.

— (implies force). Cro. Jac. 345, 473.

RESCUSSOR.—The party making a rescue.

RESEALING WRIT.—The second sealing of a writ by a master so as to continue it, or to cure it of an irregularity.

Reservatio non debet esse de proficiis ipsis, quia ea conceduntur, sed de redditu novo extra proficiua (Co. Litt.

142): A reservation ought not to be of the profits themselves, because they are granted, but from the new rent apart from the profits.

RESERVATION "is a clause of a deed whereby the feoffor, donor, lessor, grantor, &c., doth reserve some new thing to himself out of that which he granted before [by the same deed]. And this doth most commonly and properly succeed the *tenendum*." Shep. Touch. 80. See DEED, § 3.

The commonest instance of a reservation is the rent in an ordinary lease. Litt. § 215.

A reservation, in the proper sense of the word, cannot, it seems, be validly made in favor of a stranger to the deed (Co. Litt. 47a, 213a), but the same effect may be produced, at least in England, by a grant, covenant or condition in favor of the stranger, for he need not now (Stat. 8 and 9 Vict. c. 106, § 5.) be a party to the deed. And it is said that a reservation to a stranger creates an implied covenant in his favor. 4 Byth. & J. Conv. 348.

As to the difference between a reservation and an exception, see EXCEPTION, § 1.

RESERVATION, (defined). 16 Conn. 482; 38 Id. 542; 44 Vt. 416.

— (in a deed). 19 Barb. (N. Y.) 179, 192; 44 N. Y. 353, 361.

— (distinguished from an exception). 2 Ad. & E. 715, 744; 2 Man. & Ry. 335.

— (what is not). 4 East 469.

— (when valid). 36 Me. 54.

RESERVE, (in a lease). 4 Nev. & M. 807.

RESERVED, (in a treaty). 9 Cranch (U. S.) 17.

RESERVED OR TAKEN, (in a statute of Kentucky). 9 Pet. (U. S.) 378.

RESERVING, (in a deed). 5 Greenl. (Me.) 232; 129 Mass. 231, 233; 29 Ohio St. 568.

— (synonymous with "retaining"). 16 Conn. 482.

RESERVING INTEREST AS DISCOUNT, (equivalent to "taking"). 2 Pet. (U. S.) 527.

RESERVING POINTS OF LAW.—

By the English Judicature Act, 1873, § 46, but subject to any rules of court, any judge of the High Court, sitting in the exercise of its jurisdiction elsewhere than in a divisional court, may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case, or point in a case, to be argued before a divisional court; and any divisional court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued. It is also provided by the Judicature Act, 1875, Ord. xxxvi., r. 22, that upon the trial of an action, the judge may, at or after such trial, direct that judgment be entered for any or either party, as

he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge. *See, also, BILL OF EXCEPTIONS.*

RESERVING, RENDERING, YIELDING AND PAYING, (in a lease). Com. L. & T. 98, 99.

RESERVING TO, (in a deed). 107 Mass. 290.

RESERVING TO HIMSELF, (in a deed). 102 Mass. 107.

RESET.—The receiving or harboring an outlawed person.—*Cowell.*

RESET OF THEFT.—In the Scotch law, the feloniously receiving and keeping of stolen property, with knowledge of the theft.

RESETTLEMENT.—In England, where land has been settled on a marriage, and the eldest son has attained twenty-one during his father's life-time, and thus acquired an estate tail in remainder, it is usual for the father as protector (*q. v.*) to give his consent to the son's estate tail being barred on condition of a resettlement being made. The terms of such a resettlement generally are that the estate of the son shall be cut down to an estate for life, with remainder to his children (if he should marry) successively in tail, subject to the usual provisions for his widow and younger children (*see JOINTURE; PORTION*), while the father on his side charges his life estate with an annuity for the son and a jointure for the son's widow, as a provision for them before the son's estate comes into possession. (*Elph. Conv.* 420.) Such a resettlement will not, however, be supported in equity, if it appears from the unfairness of its terms or otherwise not to have been understood by the son. *Ib.*; *Wats. Comp. Eq.* 62. *See DISENTAILING DEED; ESTATE TAIL, § 11; SETTLEMENT.*

RESIANCE.—Residence; abode; or continuance.

RESIANT.—A resident. The term is chiefly used in speaking of manors. *See Wms. Comm.* 272, 280. *See, also, COURT LEET.*

RESIANT ROLLS.—Those containing the residents in a tithing, &c., which are to be called over by the steward on holding courts leet.

RESIDE, (defined). 29 Conn. 74, 81.

—— (in city charter). 10 Vr. (N. J.) 57.

—— (in attachment act). 2 Dutch. (N. J.) 207.

RESIDE OUT OF THE STATE, (in statute of limitations). 22 Mich. 178.

RESIDE UPON THE DEMISED PREMISES, (in a covenant). 2 H. Bl. 138.

RESIDENCE.—

§ 1. Residence is used in law to denote the fact that a person dwells in a given place, or, in the case of a corporation, that its management is carried on there. Thus if a company is formed in England for the purpose of carrying on a trade (such as mining or manufacturing) in a foreign country, but its business is under the control of a board of directors in England, the company is said to have its residence in England. (*Cesena Sulphur Co. v. Nicholson*; *Calcutta Jute Mills Co. v. Same*, 1 Ex. D. 428. *See, also, Thr. Jt. S. Co.* 91.) In the case of a person, residence connotes the idea of home, or at least of habitation, and need not necessarily be permanent or exclusive. *See the cases cited infra.*

§ 2. Effect of residence.—Residence is of importance in several ways: first, as an element in ascertaining a person's domicile (*q. v.*), and, secondly, as determining whether he is subject to the authorities having jurisdiction or powers within the district where he resides. Thus, where a person who was born and had long resided in Ireland came over to England, and shortly afterwards filed a petition for judicial separation in the court of divorce, it was held that his residence in England was not *bonâ fide*, and was therefore not sufficient to found the jurisdiction of the court. (*Manning v. Manning*, L. R. 2 P. & D. 223; *Westman v. Aktiebolaget, &c.*, 1 Ex. D. 237.) Residence is, however, chiefly of importance as forming part of some of the qualifications for voting at elections; and in ascertaining whether a pauper has acquired a settlement or irremovability in a township or parish. As to residence under the English Registration Acts, *see Beal v. Ford*, 3 C. P. D. 73. As to residence in questions of the irremovability and settlement of paupers, *see Reg. v. Whitby*, L. R. 5 Q. B. 325; *Reg. v. Abingdon, Id.* 406, and the cases cited in each. *See OCCUPATION; RATE.*

§ 3. Actual, or constructive.—Sometimes a distinction is drawn between actual and constructive residence, the latter term being used to mean that a person has the liberty of returning, and also the intention of returning, whenever he pleases, to the place at which he usually

resides, although he may be actually absent from it for some time. (*See Reg. v. St. Leonard, L. R. 1 Q. B. 21.*) As to the residence of clergymen, *see* NON-RESIDENCE.

RESIDENCE, (defined). 2 Ga. 171; 8 Wend. (N. Y.) 184; 41 Pa. St. 403.

— (what constitutes). 7 Man. & G. 9.
— (as distinguished from "domicile"). 40 Ill. 197; 64 *Id.* 406; 42 Miss. 186; 1 Mo. App. 404, 413; 2 Robt. (N. Y.) 701; 8 Wend. (N. Y.) 140.

— (synonymous with "domicile"). 42 Wis. 97, 107.

— (synonymous with "domicile" or "home"). 43 Me. 406.

— (synonymous with "dwelling-place"). 2 Abb. (N. Y.) Pr. 454.

— (synonymous with "dwelling-place" or "home"). 37 Me. 389.

— (how proved). 1 Browne (Pa.) 113.

— (of minor after parents' death). 1 Tuck. (N. Y.) 38.

— (of a married man is with his family). 1 Daly (N. Y.) 3.

— (depends upon intention). 1 Wend. (N. Y.) 45; 1 Ashm. (Pa.) 126.

— (of a student). 7 Mass. 5; 10 *Id.* 438.

— (in United States constitution). 11 Mass. 424.

— (what will not effect a change of). 8 Abb. (N. Y.) Pr. 78.

— (of a corporation). 22 Cal. 537; 11 Ga. 453; 5 Iowa 518; 8 *Id.* 260; 6 Mass. 458, 459; 40 Mo. 580; 2 Dutch. (N. J.) 121; 11 How. (N. Y.) Pr. 149; 15 *Id.* 17; 17 *Id.* 543; 33 *Id.* 150; 1 Strobh. (S. C.) 70; 17 Gratt. (Va.) 176.

— (in a statute). 46 Conn. 320; 64 Ill. 407; 45 Iowa 130; 2 Harr. & M. (Md.) 53; 6 Allen (Mass.) 423; 105 Mass. 93, 95; 1 Pick. (Mass.) 193; 5 *Id.* 370, 373; 54 Miss. 308; 2 Beas. (N. J.) 35; 4 Dutch. (N. J.) 516; 5 C. E. Gr. (N. J.) 263; 3 Harr. (N. J.) 138, 143; Spenc. (N. J.) 333; 16 Ch. D. 487, 488; Wilberf. Stat. L. 140; 32 Barb. (N. Y.) 440; 10 How. (N. Y.) Pr. 403; 16 *Id.* 77.

RESIDENCE, ACTUAL, (what is). 73 Ill. 16.

RESIDENCE, LEGAL, (synonymous with "domicile"). 4 Barb. (N. Y.) 504.

RESIDENCE, TEMPORARY, (distinguished from "permanent residence"). 1 Wheat. (U. S.) 4.

RESIDENT.—(1) One who resides in a given place. (2) An agent, minister or officer residing in any distant place with the dignity of an ambassador. Residents are a class of public ministers inferior to ambassadors and envoys; but, like them, they are under the protection of the law of nations.—*Encycl. Lond.* (3) A tenant who was obliged to reside on his lord's land, and not to depart from the same; called also, "*homme levant et couchant*," and in Normandy, "*resseant du fief*."

RESIDENT, (defined). 2 Pet. (U. S.) Adm. 438, 450; 4 Sawy. (U. S.) 243; 3 Ill. 377; 1 Iowa 36; 71 Pa. St. 302; 10 Am. Rep. 698.

— (who is). 10 How. (N. Y.) Pr. 477.
— (who is not). 4 How. (N. Y.) Pr. 349; 5 T. R. 466.

— (distinguished from "inhabitant"). 40 Ill. 197; 2 Gray (Mass.) 484; 1 Bosw. (N. Y.) 673; 1 Daly (N. Y.) 531; 5 Sandf. (N. Y.) 44; 19 Wend. (N. Y.) 11.

— (synonymous with "inhabitant") 20 Johns. (N. Y.) 208; 4 Wend. (N. Y.) 602; 12 East 346, 358.

— (not synonymous with "citizen"). 19 Wend. (N. Y.) 11.

— (does not include a corporation). 63 Barb. (N. Y.) 44.

— (in a charter). 2 Wils. 311.

— (in a statute). 48 Barb. (N. Y.) 174; 18 Wend. (N. Y.) 512; 4 Dutch. (N. J.) 129; 6 Vr. (N. J.) 233; 23 Gratt. (Va.) 935; L. R. 7 Q. B. 471.

RESIDENT ALIEN, (does not include a naturalized citizen). 80 N. Y. 171, 177.

RESIDENT FREEHOLDER, (in a statute). 29 Wis. 419.

RESIDENT INHABITANTS, (synonymous with "taxable inhabitants"). 13 Johns. (N. Y.) 444.

RESIDENT OF THIS STATE, (in homestead act). 7 Cal. 89.

RESIDENT OF VIRGINIA, (in a complaint). 3 Litt. (Ky.) 332.

RESIDENTS, (may comprehend aliens). 7 Mass. 523, 525.

— (corporations not created by the laws of this State are not). 28 Barb. (N. Y.) 318.

— (in a statute). 3 Vr. (N. J.) 199.

RESIDES, (in divorce act). 1 Iowa 36.

RESIDING, (synonymous with "sojourning"). 4 Sawy. (U. S.) 243.

— (in a statute). 3 Cranch (U. S.) 66; 28 Conn. 253; 11 Vr. (N. J.) 89.

RESIDING, FAMILY, (in attachment act). 4 Dutch. (N. J.) 153.

RESIDUAL.—Relating to the residue; relating to the part remaining.

RESIDUARY CLAUSE.—That clause in a will which disposes of such part of the testator's estate as *remains* undisposed of by previous provisions of the will.

RESIDUARY CLAUSE, (effect of). 3 Munf. (Va.) 76; 10 Moo. 404; 8 Com. Dig. 492.

RESIDUARY DEVISE.—*See* DEVISE, § 2.

RESIDUARY DEVISEE.—The devisee named in a will, who is to take all the real property not specifically devised.

RESIDUARY ESTATE.—*See* RESIDUE, § 1.

RESIDUARY LEGACY.—*See* RESIDUE, § 2.

RESIDUARY LEGATEE.—The person to whom the residue of a testator's personal estate, after the payment of other specific legacies, is to go.

RESIDUARY LEGATEE, (in a will). 6 Ch. D. 24.

—— (death of, in life of testator). 1 Ves. 63.

RESIDUE—RESIDUARY.—

§ 1. In administering the personal estate of a testator or intestate, the debts, funeral and testamentary expenses and the costs of the administration are first paid, and what remains is the residue in the sense of the net personal estate (*See Trethewy v. Helyar*, 4 Ch. D. 53; *Fenton v. Wills*, 7 Ch. D. 33; *Blann v. Bell*, 7 Ch. D. 382); then, in the case of a testator's estate, the legacies, annuities, &c., are paid, and what remains is the ultimate residue or residuary estate in the ordinary sense of the word. Sometimes there is a residue within a residue, or a particular residue as opposed to a general residue, as where a fund is given to A. subject to the payment thereof of certain legacies, so that if any of those legacies fail, they fall into the particular residue given to A. (*Champney v. Davy*, 11 Ch. D. 949), while the general residue of the estate is given to B. *Wats. Comp. Eq.* 1258, 1268.

§ 2. **Residuary bequest.**—A residuary bequest, *i. e.* a bequest of the testator's residuary personal estate, passes all the personalty belonging to the testator at his death and not otherwise disposed of, including lapsed legacies. (*Wats. Comp. Eq.* 1268.) Where a testator does not effectually dispose of the residue of his property he dies intestate as to it, and it goes to his heir or next of kin, according to its nature. *See* **INTESTATE**.

RESIDUE, (in a will). 40 Conn. 250, 264; 58 Mo. 400; 2 Gr. (N. J.) 68; 1 Halst. (N. J.) 139; 2 Stockt. (N. J.) 315; 9 How. (N. Y.) Pr. 214; 6 Paige (N. Y.) 616; 2 Ired. (N. C.) Eq. 58; 3 Call (Va.) 75; 17 Gratt. (Va.) 268; 1 Wash. (Va.) 45; 2 Atk. 475; 3 *Id.* 349, 350; 4 Bro. Ch. 207; Dick. 477; 12 Mod. 596; 8 Ves. 25, 26; 11 *Id.* 330; 2 T. R. 656; 4 Com. Dig. 155; Toll. Ex. 342.

RESIDUE AND REMAINDER, (in a will). 75 Pa. St. 220; 4 Wheel. Am. C. L. 394; 4 Beav. 231; Boyle Char. 390.

RESIDUE OF ALL MY ESTATE, REAL AND PERSONAL, (in a will). 6 Mod. 111.

RESIDUE OF ALL MY PERSONAL ESTATE, (in a will). 1 Vern. 3.

RESIDUE OF MY ESTATE, (in a will). 2 Gr. (N. J.) 68, 73; 3 P. Wms. 295.

RESIDUE OF MY LANDS, (in a will). 2 Atk. 168.

RESIDUE OF MY PERSONAL ESTATE, (in a will). 2 Johns. (N. Y.) Ch. 614; 1 Meriv. 305.

RESIDUE OF THE ESTATE, (devise of). 4 Johns. (N. Y.) Ch. 388.

Resignatio est juris proprii spontanea refutatio (Godb. 284): Resignation is a spontaneous relinquishment of one's own right.

RESIGNATION.—

§ 1. The renunciation, or surrender, by an officer, representative, or trustee, of his office, authority or trust.

§ 2. In ecclesiastical law, resignation is where a parson, vicar or other beneficed clergyman voluntarily gives up and surrenders his charge and preferment to those from whom he received the same. It is usually done by an instrument attested by a notary. *Phillim. Ecc. L.* 517. *See, also*, the English Incumbents Resignation Act, 1871. *See* **RELINQUISHMENT**.

RESIGNATION, (of an officer). 10 Ind. 62.

—— (the removal of an under-sheriff from the county is). 9 Wend. (N. Y.) 258.

RESIGNATION BONDS.—A resignation bond is a bond given by a presentee to a benefice, binding himself to resign the benefice either within a certain time, or indefinitely, whenever the patron should require it. (*Gibs. Cod.* 799; *Phillim. Ecc. L.* 1119.) Such bonds were formerly held legal, and might be either general or in favor of a specified person or persons, but, by two modern cases, (*Bishop of London v. Ffytche* in 1780, *Phil.* 1121; *Fletcher v. Sondes*, 5 B. & A. 335; 3 Bing. 593,) it was decided that all resignation bonds were illegal. Shortly afterwards the Stat. 9 Geo. IV. c. 94, was passed, making valid, in certain cases, resignation bonds in favor of specified persons related by blood or marriage to the patron.

RESIGNATION BONDS, (defined). 2 Steph. Com. 721.

RESIGNEE.—One in favor of whom a resignation is made.

RESIST, (defined). 37 Wis. 196.

RESISTING AN OFFICER, (what constitutes). 26 Ohio St. 196.

—— (indictment for). 3 Wash. (U. S.) 335.

RESOLUTION.—

§ 1. A resolution is an expression of opinion or intention by a meeting (*q. v.*), either corporate or parliamentary.

§ 2. **Companies—Ordinary—Special—Extraordinary.**—Under the English Companies Acts, resolutions of the members of a company are either ordinary, special, or extra-

ordinary. An ordinary resolution is one passed by a simple majority in number at an ordinary meeting. A special resolution requires first to be passed by a majority of three-fourths of the members present at a meeting summoned for the purpose, and then to be confirmed by a simple majority at a meeting held for the purpose pursuant to notice between a fortnight and a month from the first meeting. (Companies Act, 1862, § 51; Thr. Jt. S. Co. 167. The Friendly Societies Act, 1875, § 24, and the Industrial and Provident Societies Act, 1876, § 16, contain similar provisions.) An extraordinary resolution is a resolution passed by a majority of three-fourths of the members present at a meeting summoned for the purpose; it is, therefore, the same as an unconfirmed special resolution. § 129.

§ 3. **Bankruptcy.**—In bankruptcy and liquidation proceedings, an ordinary resolution is one decided by a majority in value of the creditors present (personally or by proxy) at the meeting, and voting on the resolution. (Bankr. Act, 1869, s. 16, § 7.) A special resolution is one passed by a majority in number and three-fourths in value of the creditors present (personally or by proxy) at the meeting, and voting on the resolution. (*Id.* § 8.) An extraordinary resolution is one passed by a majority in number and three-fourths in value, and confirmed by a majority in number and value at a subsequent meeting; (*Id.* s. 126;) certain requirements as to notices, and the interval between the two meetings, have to be observed. (Bankr. Rules (1870), 282.) Debts amounting to £10 and under are not taken notice of in computing a majority of value on a resolution for liquidation or composition (*q. v.*) Bankr. Act, 1869, ss. 125, 126.

Resolutio jure concedentis resolvitur juxta concessum (Mack. Civ. L. 179): The grant of any right comes to an end on the termination of the right of the grantor.

RESOLUTORY CONDITION. —

One the accomplishment of which revokes a prior obligation.

RESORT.—A court whose decision is, for the particular case before it, final and without appeal, is, in reference to that case, said to be a "Court of Last Resort."

RESORT, (in act to prevent use of opium). 15 Nev. 27.

RESORTED, (defined). 28 Mich. 213.

RESORTED TO, (in a statute). 7 Allen (Mass.) 305.

RESPECTING THE LAND, (in an affidavit). 5 Serg. & R. (Pa.) 241, 245.

RESPECTIVE, (in a will). 2 East 36; Cowp. 84.

RESPECTIVE CHILD OR CHILDREN, (in a will.) 1 Russ. 164.

RESPECTIVELY, (in a grant). 1 P. Wms. 18.

— (in a will). 2 Atk. 122; Cowp. 803; 2 Cox Ch. 8; 3 Com. Dig. 475.

RESPECTU COMPUTI VICECOMITIS HABENDO.—A writ for respiting a

sheriff's account addressed to the treasurer and barons of the Exchequer.—*Reg. Orig.* 139.

Respiciendum est judicanti, ne quid aut durius aut remissius constituatur quam causa deprecit; nec enim aut severitatis aut clementiæ gloria affectanda est (3 Inst.): The judge must see that no order be made, or judgment given, or sentence passed either more harshly or more mildly than the case requires; he must not seek renown, either as a severe or as a tender-hearted judge.

RESPITE.—(1) To discharge or dispense with. Thus, a lord is said to respite fealty when he does not exact it from his tenant. (*See* FEALTY; HOMAGE, § 2.) (2) A temporary suspension of the execution of a sentence upon a criminal; a reprieve (*q. v.*)

RESPITE, (defined). 62 Pa. St. 55.

RESPONDEAT OUSTER.—

§ 1. **Criminal proceedings.**—In English criminal procedure, that judgment which is given when a prisoner fails to substantiate a special plea in bar. Thus, if he pleads *autrefois acquit* and fails to prove it, judgment is given that he "answer over," or plead to the indictment again, in which case he may plead the general issue—not guilty. (4 Steph. Com. 405. *See* PLEA, § 2.) In English practice, however, a prisoner always pleads "not guilty," in addition to a special plea in bar; and, therefore, if he fails to substantiate it, judgment of *respondent ouster* is not necessary, but the trial proceeds as if no special plea had been pleaded. Arch. Cr. Pl. 140. As to pleas in abatement, *see* *Id.* 131.

§ 2. **Civil actions.**—In ordinary common law actions, judgment of *respondent ouster* was formerly given when the defendant pleaded a dilatory plea (*e. g.* a plea in abatement) and failed, in which case he had to plead in bar. (Sm. Ac. (11 edit.) 187.) Under the present English practice, however, pleas in abatement are abolished; the statement of defense contains all the defendant's objections to the action (unless he demurs), and they are all tried at the same time; judgment of *respondent ouster*, therefore, no longer exists; power, however, is given to decide questions of law before the trial, and to order some questions of fact to be tried before the others. Rules of Court, xix. 13, 18; xxxiv. 2.

Respondeat raptor, qui ignorare non potuit quod pupillum alienum abduxit (Hob. 99): Let the ravisher answer, for he cannot be ignorant that he has taken away another's ward.

RESPONDEAT SUPERIOR means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See* MASTER AND SERVANT, § 8; QUASI-TORT.

RESPONDENT.—A person against whom a petition is presented, a summons issued, or an appeal brought, just as a defendant is a person against whom an action is brought. *See* CO-RESPONDENT; DEFENDANT; PETITION.

RESPONDENTIA.—The hypothecation of the cargo or goods on board a ship as security for the repayment of a loan, the term *bottomry* being confined to hypothecations of the ship herself; but now the term *respondentia* is seldom used, and the expression *bottomry* is generally employed whether the vessel or her cargo or both be the security. *Maude & P. Mer. Sh.* 433; *Sm. Merc. Law* 416. *See* BOTTOMRY; HYPOTHECATION; NECESSARIES, § 4.

RESPONDENTIA, (distinguished from "bottomry contracts"). *Newb. (U. S.) Adm.* 514, 516.

RESPONDENTIA BOND, (defined). 8 *Serg. & R. (Pa.)* 138.

RESPONDERE NON DEBET.—He ought not to answer. Defendant's averment in his plea that he should not be called upon to answer, because, for instance, of some privilege claimed by him.

RESPONSA PRUDENTIUM.—In the Roman law, the answers (*i. e.* opinions) of certain jurists specially authorized by the State, and their relative authority was regulated by the Law of Citations. These answers are enumerated by Justinian as one of the six sources of the *jus scriptum* (*i. e.* of written or enacted law).—*Brown.*

RESPONSALIS "was he that was appointed by the tenant or defendant [in an action] in case of extremity and necessity to alledge the cause of the party's absence, and to certify the court upon what tryall he will put himselfe." (*Co. Litt.* 128 a.) By the common law, a party could not appear by attorney without the king's special warrant; when this rule was relaxed *responsales* became obsolete. *Id.*

RESPONSALIS AD LUCRANDUM VEL PETENDUM.—He who appears and answers for another in court at a day assigned; a proctor, attorney, or deputy. 1 *Reeves Hist. Eng. Law* 169.

RESPONSIBLE.—The ability to pay a sum for which a person may become liable, or to discharge an obligation which he may be under, is what makes him responsible: the absence of such ability makes him irresponsible. 6 *Fost. (N. H.)* 527.

RESPONSIBLE, (in a promissory note). 1 *Bouv. Inst.* 458.

RESPONSIBLE, (in a statute). 82 *Pa. St.* 343, 351.

RESPONSIBLE BIDDER, (defined). 55 *How. (N. Y.) Pr.* 118.

RESPONSIBLE FOR, SUCH AS HE WOULD BE, (in articles of agreement). 1 *Dev. (N. C.)* 372.

RESPONSIBLE, I WILL BE, (in a guaranty). 4 *Tyrw.* 548.

RESPONSIBLE, TO BE, (in an agreement). 9 *Phil. (Pa.)* 499.

RESSEISER.—The taking of lands into the hands of the crown, where a general livery or *ouster le main* was formerly misused.—*Stuundf. Prærog.*

REST, (in a will). 1 *Wash. (Va.)* 111; 2 *Bos. & P.* 247.

REST, ALL THE, (in a will). 10 *Wheat. (U. S.)* 229.

REST AND RESIDUE, (in a will). 10 *Wheat. (U. S.)* 204, 235; 3 *Atk.* 59; 1 *Barn. & Ad.* 186; 1 *Ch. Cas.* 262; 2 *Pres. Est.* 151.

REST AND RESIDUE, ALL THE, (in a will). 2 *Dall. (U. S.)* 131; 11 *East* 162; 1 *Marsh.* 44; 3 *Mod.* 228; 8 *Id.* 222; *Pr. Ch.* 264.

REST AND RESIDUE OF HIS ESTATE, (in a will). 8 *Conn.* 1, 5; 5 *Burr.* 2638.

REST AND RESIDUE OF HIS REAL AND PERSONAL ESTATE, (in a will). 2 *Vern.* 564.

REST AND RESIDUE OF MY ESTATE, (in a will). 3 *Yeates (Pa.)* 294; 1 *H. Bl.* 223.

REST OF HIS ESTATE, ALL THE, (in a will). 4 *Yeates (Pa.)* 179.

REST OF HIS GOODS, ALL THE, (in a will). *Cro. Car.* 447.

REST OF MY ESTATE, (in a will). 8 *Bing.* 323; 2 *P. Wms.* 198; 3 *Id.* 295.

REST OF MY ESTATES, ALL THE, (in a will). 2 *Chit.* 558.

REST OF MY GOODS AND CHATELS, ALL THE, (in a will). 1 *Wils.* 333.

REST OF MY LANDS, (in a will). 2 *Atk.* 168; 3 *Id.* 492; 1 *L. R.* 6 *Ch.* 333.

REST OR REMAINING PART, (in a will). 11 *Serg. & R. (Pa.)* 255.

REST, REMAINDER AND RESIDUE, (in a will). 2 *Desaus. (S. C.)* 422.

REST, RESIDUE AND REMAINDER, (in a will). 1 *McClel. & Y.* 292; 5 *Taunt.* 268; 3 *T. R.* 356.

REST, RESIDUE AND REMAINDER OF HIS REAL AND PERSONAL ESTATE, (in a will). 1 *U. S. L. J.* 611.

RE-STAMPING WRIT.—Passing it a second time through the proper office, whereupon it receives a new stamp. 1 *Chit. Arch. Pr.* (12 edit.) 212.

RESTAUR, or RESTOR.—The remedy or recourse which assurers have against each other, according to the date of their assurances; or against the master, if the loss arise through his default, as through ill-loading, want of caulking, or want of having the vessel tight; also, the remedy or recourse a person has against his guarantor or other person, who is to indemnify him from any damage sustained.—*Encycl. Lond.*

RESTITUTIO IN INTEGRUM.—A phrase borrowed from the Roman law

(see Dig. iii. 3, fr. 39, § 6; iv. 2 fr. 9, § 3), where it was applied to cases where a person who, according to strict law, had lost a right, was restored to his original position by the judgment of a court acting on equitable principles. (7 Sav. Syst. 91 *et seq.*; Thibaut Pand. § 680.) In English and American law it is used to denote the equitable relief which is given in rescinding contracts on the ground of fraud, and in similar cases, where both parties can be restored to their original position. *Phosphate Sewage Co. v. Hartmont*, 5 Ch. D. 448.

RESTITUTION.—

§ 1. **Civil action.**—In civil actions, where a defendant appeals and the judgment is reversed, he is entitled to be restored to all he has lost by the execution of the judgment. In most cases he may obtain redress by application to the court or a judge, but a writ of restitution may in all cases be issued, while in some cases it appears to be the only remedy. *Sm. Ac.* (11 edit.) 229; *Arch. Pr.* 549.

§ 2. **Stolen goods.**—In a prosecution for larceny, embezzlement, &c., where the offender is prosecuted by the owner of the goods and convicted, the property is to be restored to the owner, and the court may issue a writ of restitution, or make an order for restitution in a summary manner. (4 *Steph. Com.* 437.) In some cases the voluntary restitution of the stolen property by the thief will be taken into consideration in mitigation of punishment, but such restitution does not diminish the guilt of the party, or reduce the grade of the offense.

RESTITUTION OF CONJUGAL RIGHTS.—In English law, where one of two married persons has without lawful cause withdrawn from living with the other, the latter may present a petition to the High Court in the Probate, Divorce and Admiralty Division praying restitution of conjugal rights, on which the court will, in a proper case, compel the other to return to cohabitation. (*Browne Div.* 83.) No such remedy seems to exist in any of the United States.

RESTITUTION OF MINORS.—In the Scotch law, a restoring them to rights lost by deeds executed during their minority.

RESTITUTION OF STOLEN GOODS.—See **RESTITUTION**, § 2.

RESTITUTIONE EXTRACTI AB ECCLÉSIA.—A writ to restore a man to the

church, which he had recovered for his sanctuary, being suspected of felony.—*Reg. Orig.* 69.

RESTITUTIONE TEMPORALIU.—A writ addressed to the sheriff, to restore the temporalities of a bishopric to the bishop elected and confirmed.—*F. N. B.* 169.

RESTITUTORIA INTERDICTA.—See **INTERDICTA**.

RESTRAIN, (in a lease equivalent to “dis-
train”). *Cro. Jac.* 390.

— (not synonymous with “suppress”).
7 *Ind.* 86, 88.

— (in licensing act). 88 *Ill.* 221.

RESTRAIN, TO SUPPRESS AND, (in a statute)
42 *Iowa* 681.

RESTRAINING ORDERS.—

§ 1. **Injunction.**—These orders, in the practice of the Chancery Division of the English High Court, are of two kinds: In the general sense, a restraining order is an order of the High Court (under the original jurisdiction of the Court of Chancery) restraining a person from doing an act, *e. g.* obstructing ancient lights; such orders are now more commonly called “injunctions” (*q. v.*) *Dan Ch. Pr.* 1462, 1537.

§ 2. **Restraining order under 5 Vict. c. 5.**—In its special and more usual sense, a restraining order is an order under Stat. 5 *Vict. c. 5*, § 4, by which the Bank of England or any other public company may be restrained from permitting the transfer of stock or shares in their books or from paying dividends thereon; the application may be made in a summary way (without the institution of a suit or action) by any person interested in the stock, the object generally being to prevent any dealing with the stock until the rights of the parties have been ascertained by an action instituted in the regular manner. *Dan Ch. Pr.* 1538. See **DISTRINGAS**; **STOP ORDER**.

RESTRAINING STATUTES.—(1) Those which restrict previous rights and powers, especially of corporations. (2) Those which restrain the laxity of the common law.

RESTRAINT, (defined). 3 *Wheat. (U. S.)* 189.
— (in a statute). 2 *Tenn. Ch.* 427.

— (in a policy of insurance). 6 *Mass.* 102; 2 *Am. L. J.* 222.

RESTRAINT OF MARRIAGE.—

§ 1. **Marriage being an institution encouraged by the State**, the general rule is that every contract, the object of which is to restrain a person from marrying at all, is void (*Chit. Cont.* 619); and so is an agreement not to marry any one except a specific person. *Lowe v. Peers*, 4 *Burr.* 2225; *Wilm.* 364.

§ 2. **As to conditions in restraint of marriage**, the general rule is that such a

condition is valid if it is a condition precedent. (*See Scott v. Tyler*, 2 Dick. 712.) As to conditions subsequent, there is some difference in the case of real and personal estate. With regard to real estate, it would seem, on principle, that a condition subsequent is void, if in general restraint of marriage; but is valid if in partial restraint. (*Jones v. Jones*, 1 Q. B. D. 279; *Jenner v. Turner*, 16 Ch. D. 188.) In the former case the object of the testator was held to be not to restrain marriage, but to provide for the devisee until marriage, and the condition was therefore held to be valid. With regard to personal estate, a condition subsequent in general restraint of marriage is bad, whether there is a gift over or not, while a condition subsequent in partial restraint of marriage is good if there is a gift over, but not otherwise. A condition restraining the second marriage of a man or a woman is valid. Poll. Cont. 307.

§ 3. A limitation of property until marriage is good, whether to a widow, a widower, or an unmarried person; but in the case of an unmarried person, it seems that to make the restriction valid there must be a limitation over in the event of the donee marrying (*Wats. Comp. Eq.* 1139), because such gifts are construed rather as provisions for the donee until marriage, than as restraints on marriage. (*Morley v. Reynoldson*, 2 Ha. 580.) So that a condition in restraint of marriage may be void, while the same result might be attained by a limitation.

RESTRAINT OF TRADE.—

§ 1. The general rule is that a man ought not to be allowed to restrain himself by contract from exercising any lawful trade or business at his own discretion and in his own way (*Poll. Cont.* 284), the reason being that such a contract tends to deprive the public of the advantage of employing him, and would *pro tanto* create a monopoly (*q. v.*) *Mitchel v. Reynolds*, 1 P. Wms. 181; 1 Sm. Lead. Cas. 406.

§ 2. General restraint.—A contract in general restraint of trade is one which provides that one of the parties shall not carry on a particular trade at all, or shall carry it on under the control of another person who has a rival business, or the

like, (*Hilton v. Eckersley*, 6 El. & B. 47, 66; *and, see, Jones v. North*, L. R. 19 Eq. 426;) such contracts are, as a general rule, void. Chit. Cont. 614. For instances of exceptions, *see Wallis v. Day*, 2 Mees. & W. 273; *Leather Cloth Co. v. Lonsont*, L. R. 9 Eq. 345.

§ 3. Partial restraint.—A contract in restraint of trade may, however, be valid if it is limited to a certain district or area, and is not unreasonable in its terms; thus an agreement, for valuable consideration, not to carry on a business for a term of years, or within a certain district, may be valid. (*Chit. Cont.* 615.) Such a stipulation is not unfrequently inserted in an agreement of partnership, where the partner, who is the owner of the goodwill, wishes to be protected against a rival business being set up in his neighborhood by the other partner when the partnership comes to an end.

RESTRAINT ON ALIENATION

is where property is given to a married woman to her separate use without power of alienation. The validity of such a provision is allowed by law as an exception to the general rule that every owner of property is at liberty to alienate it, the object being to prevent a married woman from being induced by her husband to alienate her property for his benefit. The restraint only takes effect so long as she is married. *Snell Eq.* 290; *White & T. Lead. Cas.* 468; *In re Ridley*, 11 Ch. D. 645.

RESTRAINT ON ANTICIPATION.—*See ANTICIPATION*, § 1.

RESTRAINTS, (in a policy of insurance). 12 *Serg. & R. (Pa.)* 440, 443.

RESTRAINTS AND DETAINMENTS, (in a policy of insurance). 8 *Cranch (U. S.)* 59.

RESTRICTION.—In the case of land registered under the English Land Transfer Act, 1875, a restriction is an entry on the register made on the application of the registered proprietor of the land, the effect of which is to prevent the transfer of the land or the creation of any charge upon it, unless notice of the application for a transfer or charge is sent by post to a certain address, or unless the consent of a certain person or persons to the transfer or charge is obtained, or unless some other thing is done. (§§ 58, 59.) The object of this provision is not very clear; it has been suggested that it will be employed "by an owner who is fearful of his estate being conveyed away from him behind his

back by means of forgery or personation." Char. R. P. Acts 218. See CAUTION; INHIBITION.

RESTRICTIVE INDORSEMENT.

—One limiting the payment of money to a named person, or for a certain purpose, only.

RESTS.—This word is used with reference to accounts between debtors and creditors, and signifies the making a pause in the accounts by striking a balance therein. *Butter v. Harrison*, Cowp. 566. See ACCOUNT, § 12 *et seq.*

RESTS, (in computing interest). 11 Ves. 92.

RESULT.—

§ 1. In law, a thing is said to result when, after having been ineffectually or only partially disposed of, it comes back to its former owner or his representatives.

§ 2. **Resulting uses and trusts.**—Thus, if A. conveys land to B. and his heirs to the use of C. for life, on C.'s death the use results to A., *i. e.* A. or his heirs again become the owners of the land, because no disposition is made beyond C.'s life. (*Wms. Real Prop.* 158.) This is a resulting use. A resulting trust is similar. See TRUST; USE.

§ 3. **Conversion.**—When land is directed to be converted into money for a special purpose and the object fails, so that either the sale becomes unnecessary, or (if the sale has taken place) the proceeds are not required to be applied for the purpose directed, then the land or the proceeds of sale (as the case may be) result to the settlor, or his heir, residuary devisee, &c. (*Ackroyd v. Smithson*, 1 Bro. Ch. C. 503; 1 White & T. Lead. Cas. 783.) The same rule applies to the converse case of a conversion of money into land. Thus, if a testator directs his real estate to be sold, and the purposes for which he has directed the conversion, or some of them, fail to take effect (*e. g.* by lapse), then the real estate, if it has not been sold, or the undisposed of proceeds if it has, result to the heir or residuary devisee as if the conversion had not been directed (*Wats. Comp. Eq.* 109); and this is none the less so where the testator has created a "blended fund." (See that title.) In the case of a total failure of the objects for which the conversion is directed, there is no differ-

ence whether the instrument is *inter vivos* or testamentary, *i. e.* the property results to the author of the trust or his representatives in its original state. Thus, if a testator directs his land to be sold, and the proceeds to be divided between A. and B., and they both predecease the testator, then the land goes to the testator's heir as land. But in case of a partial failure of the purposes for which conversion is directed, the general rule is that where the instrument is one *inter vivos* (*e. g.* a deed), the property results to the settlor in the condition into which he has directed it to be converted (whether realty or personalty), and, therefore, devolves as such on his death, unless he has otherwise disposed of it, (*Clarke v. Franklin*, 4 K. & J. 257;) while, where the instrument is a will, there is a distinction between a conversion of land into money, and money into land; for if a testator directs a conversion of land into money, and some of the purposes fail, that part of the proceeds which is undisposed of results to the testator's heir as money, so that on the heir's death it devolves with the rest of his personalty, unless specially disposed of by him, (*Smith v. Claxton*, 4 Mad. 484;) but if a testator directs a conversion of money into land, and some of the purposes fail, the money which is undisposed of results to the next of kin as personalty, and not as land. *Reynolds v. Godlee*, 1 Johns. (Eng.) 536. See BLENDED FUND; CONVERSION, § 2 *et seq.*; RECONVERSION.

RESULTING TRUST.—See RESULT, § 1; TRUST.

RESULTING TRUST, (defined). 58 Ala. 84; 1 Wend. (N. Y.) 625.

— (what is). 2 Watts (Pa.) 323; 2 Atk. 71, 150 *n.*; 5 Myl. & C. 125.

— (what is not). 5 Watts (Pa.) 389; 7 Jur. 523.

— (by operation of law). 1 Watts (Pa.) 193.

— (may be proved by parol). 5 Watts (Pa.) 27.

— (cannot arise where there is an express trust declared by the parties). 5 Paige (N. Y.) 117.

— (cannot be claimed by one who pays part only of the consideration for land conveyed to another). 15 Wend. (N. Y.) 647.

RESULTING USE.—See RESULT, § 1; USE.

RE-SUMMONS.—A second summons, calling upon a person to answer an action where

the first summons is defeated. Obsolete. As to re-summons in claims of consanguinity, *see* 2 Chit. Arch. Pr. (12 edit.) 1347.

RESUMPTION.—This word, as used in the Stat. 31 Hen. VI. s. 7, signifies the taking again into the king's hands such lands or tenements as before, upon some false suggestion or other error, he had delivered to the heir, or granted by letters patent to any man.—*Cowell; Termes de la Ley*. The policy of the resumption of royal grants of lands was much agitated after the Revolution in 1688, owing chiefly to the lavish way in which William III. made such grants to the Duke of Portland and others.—*Brown*.

RE-SURRENDER.—Where copyhold land has been mortgaged by surrender, and the mortgagee has been admitted, then on the mortgage debt being paid off, the mortgagor is entitled to have the land reconveyed to him, by the mortgagee surrendering it to the lord to his use. This is called a "re-surrender." 2 Dav. Prec. Conv. 1332 n. Compare RE-CONVEYANCE.

RETAIL.—To sell goods in small parcels and not in gross. "Retailer," one who sells at retail.

RETAIL, (in a statute). 9 Pick. (Mass.) 166. — (selling by, what is). *Ld. Raym.* 1421; *Str.* 718, 1124.

RETAILER OF SPIRITUOUS LIQUORS, (who is not). 1 Cranch (U. S.) C. C. 268.

RETAINER.—

§ 1. By executor.—The right of retainer is the right which the executor or administrator of a deceased person has to retain out of the assets sufficient to pay any debt due to him from the deceased in priority to the other creditors whose debts are of equal degree. (3 Steph. Com. 263.) The executor does not forfeit this right by instituting an administration suit in his character of creditor. *Ex parte Campbell*, 16 Ch. D. 198. *See, also, Crowder v. Stewart*, *Id.* 368. *See* ACTION, § 10.

§ 2. Of counsel, or solicitor.—A retainer is the engagement of a counsel or solicitor to take or defend proceedings, or to advise or otherwise act for the client. Chit. Gen. Pr. 85.

§ 3. Retainers to attorneys and solicitors (which are not commonly in writing) are of two kinds. A special retainer is an engagement for a particular action or proceeding. A general retainer extends to all business, present and future, until it is determined.

§ 4. Retainers to counsel (which, in England, can only be given by solicitors, not by the client,

and involve the payment of a fee,) are of three kinds. A general retainer is one given on behalf of a client for all future business in which he may require the counsel's services. The better opinion seems to be that such a retainer entitles the counsel to a common retainer (*infra*, § 5), when the client becomes a party to a proceeding in the court or on the circuit in which the counsel generally practices. In some cases a restricted general retainer is given. Thus, where a ship has been lost, the insurers may give a retainer to counsel for all actions arising out of the loss.

§ 5. A common retainer (sometimes called, especially in Chancery practice, a "special retainer,") is one given in a particular action or proceeding.

§ 6. A special retainer (in the strict sense) is one given to a counsel to conduct a case on a foreign circuit, *i. e.* a circuit on which he does not usually practice.

RETAINER, (executor's right of, extends to debts due him jointly with others or as trustee). 6 Paige (N. Y.) 415.

RETAINING FEE.—*See* RETAINER, § 2 *et seq.*

RETALIATION.—The *lex talionis* (*q. v.*)

RETENEMENTUM.—Detaining, withholding, or keeping back.—*Cowell*.

RETENTION.—In the Scotch law, the right of withholding a debt or retaining property until a debt due to the person claiming the right of retention shall be paid; a lien.

RETINENTIA.—A retinue, or persons retained by a prince or nobleman.—*Cowell*.

RETIRE, as applied to a bill of exchange, usually means that an indorser has taken it up by paying his immediate or some subsequent indorsee, after which he is in a position to recover from the antecedent parties. But it is sometimes used in the case of an acceptor who has paid and extinguished the bill. (Byles Bills. 222.) As to the retirement of a trustee, *see* TRUSTEE.

RETIRE A BILL OF EXCHANGE, TO, (equivalent to "canceling" and "discharging"). 25 Eng. L. & Eq. 423, 431.

RETORNA BREVIVM.—The returns of writs.

RETORNO HABENDO.—*See* DE RETORNO HABENDO.

RETORSION.—In international law, when a sovereign is not satisfied with the manner in which his subjects are treated by the laws and customs of another nation

he is at liberty to declare that he will treat the subjects of that nation in the same manner. This is called "retorsion." *Man. Int. Law* 142. Compare REPRISALS; EM-BARGO.

RETOUR.—In the Scotch law, an extract from the Chancery of the service of an heir to his ancestor.—*Bell Dict.*

RETOUR SANS PROTET.—Return without protest. A request or direction by a drawer of a bill of exchange, that, should the bill be dishonored by the drawee, it may be returned without protest or without expense (*sans frais*). *Byles Bills* (11 edit.) 260.

RETOUR SANS PROTET, (in a bill of exchange). 1 *Bouv. Inst.* 461.

RETRACT.—*LATIN*: *re*, back, and *trahō*, to draw.

To take back. To retract an offer is to withdraw it before acceptance, which the offerer may always do. *See OFFER.*

RETRACTATION, in probate practice, is a withdrawal of a renunciation (*q. v.*) A retractation is only allowed in special cases; it would apparently be permitted where the person in whose favor the renunciation was made has not availed himself of it, or has died. *Coote Pro Pr.* 221.

RETRACTUS AQUÆ.—The ebb or return of a tide.—*Cowell.*

RETRAXIT.—In the common law practice, a mode of withdrawing from an action, and takes place where a plaintiff or demandant abandons his action at the trial, and thus loses his right of action altogether. (*Co. Litt.* 138 b. *See NONSUIT.*) It has long been practically obsolete. *Chit. Gen. Pr.* 1515.

RETRAXIT, (cannot be entered by attorney). *Cro. Jac.* 211.

RETREAT.—*See DRUNKENNESS*, § 3.

RETROACTIVE, (naturalization is). 1 *Johns. (N. Y.) Cas.* 399.

— (when a remedial statute is). 2 *Ilen. & M. (Va.)* 181.

RETROACTIVE STATUTE, (effect of). *Dwar. Stat.* 680.

— (when constitutional). *Phil. (N. C.) L.* 410.

RETROCESSION.—In the civil law, a re-assignment of inheritable rights to the cedent or original assignor

RETROSPECTIVE, (a statute will be presumed not to be). 2 *Mod.* 310.

— (a statute is never construed to be so as to take away a vested right). 8 *Wend. (N. Y.)* 661.

RETROSPECTIVE LAW.—A law which relates or looks backward, which affects an act done, or a right accrued before its passage. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, must be deemed *retrospective*. 2 *Gall. (U. S.)* 139. *See EX POST FACTO.*

RETROSPECTIVE LAW, (defined). 2 *Gall. (U. S.)* 105, 139.

— (what is). 9 *Pick. (Mass.)* 259.

— (what is not). 12 *Sm. & M. (Miss.)* 347; 12 *Serg. & R. (Pa.)* 330, 310; 13 *Id.* 256; 6 *Watts (Pa.)* 449; 1 *Bay (S. C.)* 179.

— (effect of). 10 *Serg. & R. (Pa.)* 101; 8 *Wheel. Am. C. L.* 150.

— (distinguished from "prospective"). 12 *Wheat. (U. S.)* 379.

— (distinguished from "*ex post facto*"). 8 *Pet. (U. S.)* 88, 110; 12 *Wheat. (U. S.)* 260; 26 *Iowa* 340; 13 *Vr. (N. J.)* 231; 1 *Watts (Pa.)* 356.

— (when valid). 16 *Serg. & R. (Pa.)* 37; 3 *Watts (Pa.)* 204; 3 *Whart. (Pa.)* 484; 8 *Bro. P. C.* 196.

RETROSPECTIVE LAWS, (in constitution of New Hampshire). 3 *N. H.* 473, 474; 4 *Id.* 16; 6 *Id.* 109.

RETTE.—A charge or accusation. *Co. Litt.* 173 b.

RETURN.—

§ 1. To writ.—A return is a report by an officer of a court showing the manner in which he has performed a duty imposed on him. Thus, the sheriff or other officer executing a writ of execution has to return or report to the court what he has done in pursuance of it, though in most cases it is not usual for a return to be made, unless ulterior proceedings are contemplated. (*Sm. Ac.* 203.) If a return is required, an order calling upon the sheriff to make it (called, in the language of common law practice, a "rule to return,") may be obtained. (*Id.* 204.) The return is usually written on the back of the writ, which is then filed. Returns to writs are commonly known by the first words of the old returns, which were given in Latin, *e. g. nulla bona, fieri feci, non est inventus.* *See the various*

titles. As to the return to a writ of *mandamus*, (See an instance of a return to a *mandamus*, *Queen v. Postmaster-General*, 1 Q. B. D. 658,) see **MANDAMUS**, § 2.

§ 2. As to the consequences of a false return, see **FALSE RETURN**.

§ 3. **Citation**.—In probate practice, a citation (*q. v.* § 4) must be returned into the court or registry as soon as it has been served. *Browne Prob. Pr.* 276.

§ 4. **Official returns**.—Companies and other associations established under statutory authority are in many cases required to send in periodical returns to a public officer, with reference to their condition. Thus, every company formed under the English Companies Act, 1862, and having a share capital, is bound to send in a yearly return to the registrar of joint stock companies, giving a list of its shareholders, and showing the position of its capital and the alterations in its register of shareholders since the last return. (Section 26; see Stat. 33 and 34 Vict. c. 61, as to returns by life assurance companies; Stats. 7 Geo. IV. c. 46, and 7 and 8 Vict. c. 32, as to returns by bankers and banking companies.) Industrial and provident societies and friendly societies are also required to make returns, and, in New York, manufacturing companies organized under the general act (1848) are required to make yearly reports or returns.

RETURN, (defined). 12 Conn. 181, 187; 8 Moo. 202.

— (of board of examiners). 13 Gray (Mass.) 85.

— (equivalent to re-enter). *Dyer* 125 b.

— (of a writ). 18 Wend. (N. Y.) 582.

— (in statute of limitations). 1 Pick. (Mass.) 262; 3 Johns. (N. Y.) 267.

— (in a will). 3 Gr. (N. J.) 276; 3 Halst. (N. J.) 112.

RETURN A. HIS BOND, (in a will, is not a release). 3 Ves. 231.

RETURN AND HIRE OF A NEGRO, (contract for). 4 Wheel. Am. C. L. 3.

RETURN-BOOK.—The book containing the list of members returned to the House of Commons.—*May Parl. Pr.*

RETURN-DAYS.—Certain days in term for the return of writs. 1 Chit. Arch. Pr. (12 edit.) 160. A day named in a writ on which it is returnable.

RETURN INTO THIS STATE, (in a statute). 10 Johns. (N. Y.) 464.

RETURN IRREPLEVISABLE.—See **REPLEVIN**.

RETURN OF AN EXECUTION, (equivalent to return upon an execution). 60 Me. 592.

RETURN OF PREMIUM.—See **RISK**, § 2.

RETURNABLE.—

§ 1. Writs of execution, writs of *mandamus*, and many other kinds of writs, are returnable, i. e. the person to whom they are directed is bound or may be required to make a return to them. The term is, however, chiefly used with reference to the time when the writ is returnable. Some writs are returnable at a date named in them, while others, such as writs of execution, are returnable as soon as they are executed (*Arch. Pr.* 532), or if not executed within a certain time, generally sixty days from the time of their issue.

§ 2. By analogy to this use of the word, a summons or order to show cause is said to be returnable on the day appointed for hearing it.

RETURNED INTO THE CLERK'S OFFICE, (in statute respecting executions). 3 Pick. (Mass.) 334.

RETURNED WELL CLOTHED, (in an agreement). 5 Munf. (Va.) 483.

RETURNING, (in statute of limitations). 7 Mass. 517.

RETURNING BOARD.—The name applied in some of the States to the board of canvassers of elections.

RETURNING FROM TRANSPORTATION.—Coming back to England before the term of punishment is determined. It was an offense against public justice. (4 and 5 Will. IV. c. 67.) The punishment of transportation is abolished. See **PENAL SERVITUDE**.

RETURNING INTO THE PROVINCE, (in a statute). 9 Serg. & R. (Pa.) 292.

RETURNING OFFICER.—The official who conducts a parliamentary election in England. The sheriff in counties, and the mayor in boroughs.

RETURNS, (in an insurance policy). 1 Hall (N. Y.) 177.

RETURNS HOME, (in an insurance policy). 3 Cow. (N. Y.) 210.

RETURNUM AVERIORUM.—A judicial writ, similar to the *retorno habendo*.—*Cowell*.

REUS.—In the civil law, a defendant; properly the debtor to whom the question was put. *Rei*, the parties or litigants. Cum. Civ. L. 251.

REUS PROMITTENDI.—See REUS STIPULANDI.

REUS STIPULANDI.—The party to a stipulation is so called if he is the creditor or obligee, and the debtor or obligor to such a stipulation is called the "*reus promittendi*." Where there are several creditors or several debtors jointly entitled to or jointly liable under a stipulation, they were respectively called "*correi*," i. e. joint *rei*.—Brown.

REVE, or GREVE.—The bailiff of a franchise or manor, an officer in parishes within forests, who marks the commonable cattle.—Cowell.

REVEL, (defined). 12 R. I. 309.

REVELACH.—Rebellion.—Domesd.

REVELAND.—The land which in Domesday is said to have been thane-land, and afterwards converted into reveland. It seems to have been land which having reverted to the king after the death of the thane, who had it for life, was not granted out to any by the king, but rested in charge upon the account of the reve or bailiff of the manor. Spel. Feuds c. xxiv.

REVELS.—Sports of dancing, masking, &c., formerly used in princes' courts, the inns of court, and noblemen's houses, commonly performed by night; there was an officer to order and supervise them, who was entitled the "master of the revels."—Cowell.

REVEMOTE.—The court of the *reve*, *reeve*, or *shire-reeve*. 1 Reeves Hist. Eng. Law 6.

REVENDICATION.—Upon the sale of goods on credit, by the law of some commercial countries, a right is reserved to the vendor to retake them, or he has a lien upon them for the price, if unpaid; and in other countries he possesses a right of stoppage *in transitu*, only in cases of insolvency of the vendee. The Roman law did not generally consider the transfer of property to be complete by sale and delivery alone without payment or security given for the price, unless the vendor agreed to give a general credit to the purchaser; but it allowed the vendor to reclaim the goods out of the possession of the purchaser, as being still his own property. *Quod venditū (say the Pandects), non aliter, fit accipietur, quam si aut pretium nōdum solutum sit, aut satis eo nomine datum, vel etiam fidem habuerimus emptori sine ulla satisfactione.* The present code of France gives a privilege or right of revendication against the purchaser for the price of goods sold, so long as they remain in possession of the debtor. In respect to ships, a privilege is given by the same code to a certain class of creditors, such as vendors, builders, repairers, mariners, &c., upon the ship, which takes effect even against subsequent purchasers, until the

ship has made a voyage after the purchase; and, by the general maritime law, acknowledged in most, if not in all, commercial countries, hypothecations and liens are recognized to exist for seamen's wages and for repairs of foreign ships, and for salvage. (Story Conf. L. § 401.)—Wharton.

REVENUE.—Income; annual profit received from land or other funds; also the profits or fiscal prerogatives of the crown, or government. See EXCHEQUER.

REVENUE, (defined). 4 Blatchf. (U. S.) 311.

REVENUE LAWS, (defined). 4 Biss. (U. S.) 188; 1 Woolw. (U. S.) 170.

— (what are). 3 Pittsb. (Pa.) 192; 15 Int. Rev. Rec. 30.

— (what are not). 13 Blatchf. (U. S.) 207.

— (in act of congress). 5 Blatchf. (U. S.) 514.

REVENUES OF THE CANAL, (in State constitution). 34 Barb. (N. Y.) 123, 134; 24 N. Y. 485, 488.

REVERSAL.—The annulling or making void a judgment or an outlawry.

REVERSE.—To undo, repeal, or make void. A judgment is said to be reversed when it is set aside by an appellate court.

REVERSE, (as applied to a decree). 14 Wend. (N. Y.) 666.

— (as applied to a judgment). 7 Kans. 254.

REVERSED, (defined). 1 Serg. & R. (Pa.) 79.

REVERSER.—A reversioner.

Reversio terræ est tanquam terra revertens in possessione donatori, sive hæredibus suis post donum finitum (Co. Litt. 142): A reversion of land is, as it were, the return of the land to the possession of the donor or his heirs after the termination of the estate granted.

REVERSION—REVERSIONER.—

§ 1. **In land.**—Where a tenant in fee-simple grants the land to another person for a term of years, or for life, or in tail, the estate so created is called a "particular estate," being only a part, or *particula*, of the estate in fee, and the interest of the tenant in fee-simple, which still remains undisposed of, is called his "reversion." It is a present or vested estate, by virtue of which he will have the possession of the land again on the determination of the particular estate. Similarly, if a tenant for life grants a lease for years, or if a tenant for years grants an underlease for a shorter term, the estate which remains in

him is called a "reversion." The owner of a reversion is called the "reversioner."

§ 2. The relationship of tenure exists between the owner of the reversion and the particular tenant, and, therefore, fealty (*q. v.*) is nominally due from the latter to the former. A rent service or other service may also be reserved by the owner of the reversion, and thus made incident to the reversion, so that if the reversion is aliened the rent or service passes with it. The rent may be severed from the reversion, but the fealty cannot; therefore, if the owner grants the reversion to another person, he may reserve the rent to himself, but not the fealty. (Co. Litt. 142b *et seq.*; Wms. Real Prop. 248. See ATTORNMEN; RENT, § 3.) A condition of re-entry may also be annexed to a reversion, and will pass with it on an assignment. Stat. 32 Hen. VIII. c. 34; Co. Litt. 215a. As to the difference between a reversion and a remainder, see REMAINDER.

§ 3. Merger of reversion.—If A., being a tenant in fee-simple, grants a lease to B., and B. grants an underlease to C., reserving a rent, this rent is incident to B.'s reversion; consequently if A. grants his reversion to B., this causes a merger or destruction of B.'s reversion, and, at common law, C.'s rent, being incident to it, would also be destroyed. B. would be tenant in fee-simple in reversion, but his right to the rent would be gone. To prevent this it has been enacted (in effect) that where the reversion expectant on a lease is surrendered or merges, the estate next in reversion or remainder shall, for the purpose of preserving the incidents to the reversion so merged, be deemed to be the reversion expectant on the lease. (Stat. 8 and 9 Vict. c. 106, § 9; Wms. Real Prop. 251.) In the case supposed, therefore, the rent payable by C. would be converted into a rent incident to B.'s reversion in fee-simple.

As to covenants running with the reversion, see COVENANT, § 5; RUNNING WITH THE REVERSION.

§ 4. In personalty.—"Reversion" is also used to denote a reversionary interest, *e. g.* an interest in personal property subject to the life interest of some other person. See REVERSIONARY INTEREST.

As to sales of reversions, see REVERSIONARY INTEREST, § 4.

REVERSION, (defined). 2 Dutch. (N. J.) 526. — (a right of entry is not). 12 N. Y. 121. — (estates in). 4 Kent Com. 354; 2 Bl. Com. 175. — (in a will). 13 Ves. 358; 2 Ves. Sr. 48. REVERSION AND REMAINDER, (in a will). 10 Wheat. (U. S.) 237; 1 T. R. 105.

REVERSIONARY.—That which is to be enjoyed in reversion.

REVERSIONARY INTEREST.—

§ 1. Any right in property, the enjoyment of which is deferred, is a reversionary interest in the wide sense of the term; but in the ordinary sense of the term, reversionary interests are interests in property which are not reversions or remainders in the strict sense, but are analogous to them. Thus, if personal property is limited to A. for life, and after his death to B., this gives B. a reversionary interest analogous to a remainder in land. Similarly, if A. gives B. a life interest in chattels, A. retains a reversionary interest, analogous to a reversion in land.

§ 2. Reversionary interests were formerly only recognized by the Court of Chancery, being equitable interests. (See EQUITY.) They are usually created by means of trusts, the legal estate in the property being conveyed to trustees, as in the case of an ordinary marriage settlement of personal property. See Wms. Pers. Prop. 310. See, also, SETTLEMENT.

§ 3. *Malins's Act.*—By Stat. 20 and 21 Vict. c. 57, every married woman, with the concurrence of her husband, may by deed dispose of every future or reversionary interest in personal property, whether vested or contingent, to which she, or her husband in her right, may be entitled under any instrument made after the 31st of December, 1857, or release or extinguish any power or equity to a settlement in regard to such personal property. Every such disposition must be acknowledged by her under the Fines and Recoveries Act. (See ACKNOWLEDGMENT, § 1.) The statute does not apply to marriage settlements, nor to reversionary interests which the married woman is restrained from alienating.

§ 4. Sales of reversions.—Formerly there was a rule in equity, that in the case of the sale of a reversionary interest in real or personal estate, the purchaser was bound to show that he had given the fair market price for it, and if he was unable to do so, the sale was set aside; this rule was abolished, in England, by Stat. 31 Vict.

c. 4, (Wms. Real. Prop. 464; Poll. Cont. 529; Earl of Aylesford v. Morris, L. R. 8 Ch. 490;) but in cases of fraud or unfair dealing equity still interferes. See EXPECTANT HEIR; INADEQUACY.

REVERSIONARY LEASE.—One to take effect *in futuro*. A second lease to commence after the expiration of a former lease. All leases where a particular estate subsists are leases in reversion. Woodf. Land. & T. (10 edit.) 158, 160, 166.

REVERSIONER.—One who has a reversion.

REVERT.—To revert is to return. Thus, when the owner of an estate in land has granted a smaller estate to another person, on the determination of the latter estate the land is said to revert to the grantor. See REVERSION; REVERTER.

REVERTER.—In feudal times, on every grant of land "a right remained in the grantor to the services of the grantee during the continuance of his estate and to a return of the land on its expiration. Whether this right of the grantor depended on an estate for life or in fee, it was of the same nature and indifferently called his 'reverter,' or 'escheat;' but from the remoter probability of the return when the fee was granted, it became customary to call it, after a grant of the fee, his 'possibility of reverter;' by degrees that expression was applied to those cases only where a limited fee had been granted, and the word 'escheat' was applied to those where the grant had conferred an absolute estate in fee-simple. A grant to a man and the heirs of his body, was at common law a limited fee; and, therefore, after such a grant, a possibility of reverter was said to remain in the grantor. When the Statute *De Donis* converted such estates into estates tail, the return of the land was secured by it to the donor and was called his 'reverter.' In all these cases, the words 'reverter' and 'reversion' are synonymous." (Butler's note to Fearn Rem. 381.) A reverter after an estate in fee-simple conditional, is still called a "possibility of reverter." See FORMEDON; POSSIBILITY, § 2.

REVERTING, (in bankruptcy act). L. R. 6 Ex. 279.

REVEST.—To replace one in the possession of anything of which he has been divested, or put out of possession. (Rop. Husb. & W. 353.) It is opposed to divest. The words "revest" and "divest" are also applicable to the mere right or title, as opposed to the possession.—*Brown*.

REVIEW.—To examine again; to revise or reconsider. Thus, when a taxing

master or clerk has taxed a bill of costs, any party who is dissatisfied with the taxation may, before the certificate or *allocatur* is signed, deliver to the opposite party and carry in before the taxing master an objection specifying the items of which he complains, and apply to him to review the taxation accordingly. If any party is dissatisfied with the result of this preliminary review, he may apply to a judge at chambers for an order to review the taxation, and the judge thereupon gives such directions (if any) to the taxing master as he thinks proper. This is also called a "retaxation of the costs."

As to bills of review, see BILL OF REVIEW; as to the Court of Review, see COMMISSIONERS, p. 236 n.

REVIEW, BILLS OF, (distinguished from writs of error and appeal). 9 Pet. (U. S.) 770 app.

REVILING CHURCH ORDINANCES.—An offense against religion, punishable in England by fine and imprisonment. 4 Steph. Com. (7 edit.) 208.

REVISING, (synonymous with "correcting"). 14 Me. 205.

REVISING BARRISTERS.—Barristers appointed to revise the lists of voters for parliamentary elections, on which occasion they decide disputed claims to the right of voting. An appeal lies to the High Court in the Common Pleas Division. 2 Steph. Com. 355; Stat. 6 and 7 Vict. c. 18; 36 and 37 Vict. c. 70, and intermediate statutes.

REVIVAL—REVIVOR.—

§ 1. **Will.**—The term revival is sometimes applied to wills. Thus, where a testator revokes a will, he is said to revive it if he subsequently re-executes it, or executes a will or codicil showing an intention to revive it. Jarm. Wills (4 edit.) 145.

§ 2. **Divorce.**—In the law of divorce, condonation (*q. v.*) being forgiveness of a conjugal offense, with an implied condition that the injury shall not be repeated, and that the condoning party shall be treated with conjugal kindness, it follows that on breach of the condition, even by the commission of a slighter offense, the right to a remedy for the former injury is revived. Thus, in English divorce law, cruelty will revive condoned adultery. Browne Div. 102.

§ 3. **Revivor of action, &c.**—Under the practice of Courts of Chancery, when

a suit becomes defective by the death, marriage or bankruptcy of one of the parties, or by an assignment of the subject-matter of the suit *pendente lite*, or by some other change in the interest of some of the parties, it is necessary to revive it, *i. e.* take steps for carrying on the proceedings. This is generally done by an order of revivor obtained as of course, but in some cases a new bill, called a "bill of revivor," has to be filed. (Dan. Ch. Pr. 1377 *et seq.*) Under the new English and codes practice, an order of revivor is only required where it is necessary to carry on the proceedings between the continuing parties and some new party; thus, where a defendant becomes bankrupt, an order of revivor may be obtained continuing the proceedings against his trustee as if he had originally been a defendant. *Chorlton v. Dickie*, 13 Ch. D. 160. See **ABATEMENT**, § 5.

§ 4. **Revivor of judgment.**—In the common law courts, also, if six years elapsed, or if one of the parties died, after the recovery of a judgment, it became necessary to revive it by writ of revivor, *scire facias*, or suggestion (*q. v.*) (Sm. Ac. (11 edit.) 300 *et seq.*; 3 Steph. Com. 591.) Under the new practice, when six years have elapsed from the recovery of a judgment, or any change has taken place in the parties to the judgment (*e. g.* by death), an application must be made for leave to issue execution; on that application the court or judge may either order execution to issue, or may direct any question necessary to determine the rights of the parties to be tried. See **JUDGMENT**, § 21.

REVIVE.—To make oneself liable for a debt barred by the Statute of Limitations by acknowledging it; or for a matrimonial offense once condoned by committing another.

REVIVED, (in statute of limitations). 37 Iowa 206.

REVIVOR, BILL OF.—See **BILL OF REVIVOR**.

REVIVOR, BILL OF, (is the continuation of an old suit). 12 Pet. (U. S.) 164.

REVIVOR, ORDER OF.—See **ORDER OF REVIVOR**.

REVOCABLE.—That which may be revoked.—See **POWER**; **REVOCATION**; **WILL**.

REVOCATION—REVOKE.—**LATIN:** *revocare*, to recall.

§ 1. To revoke literally means to recall. Thus, to revoke an offer or authority is to withdraw it. Revocation is the operation of revoking. Revocation is of three kinds: by act of the party; by operation of law, and by order of a court of justice (judicial revocation).

§ 2. **By act of the party.**—Revocation by act of the party is an intentional or voluntary revocation. The principal instances occur in the case of authorities and powers of attorney and wills. The two former require no particular form of revocation. (Stokes Pow. Att.; Poll. Cont. 10; Sm. Merc. L. 153.) A will may be revoked by a subsequent inconsistent will or codicil, or by a writing declaring an intention to revoke, and executed with the same formalities as a will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking it. Wms. Ex. 123. As to revocation by marriage, see *infra*, § 3; and as to alterations in wills, see **ALTERATION**, &c., § 4.

§ 3. **In law, or constructive.**—A revocation in law, or constructive revocation, is produced by a rule of law, irrespectively of the intention of the parties. Thus, a power of attorney is in general revoked by the death of the principal. (Stokes L. of A.) But after the 31st December, 1881, acts done under a power of attorney, without notice of its revocation, will, in England, be good. (See **POWER OF ATTORNEY**.) A will is always revoked by the subsequent marriage of the testator, except when made in exercise of a power of appointment under which the property appointed would not, in default of appointment, pass to the real or personal representatives or next of kin of the testator. As to the effect of insanity in revoking an authority, see **LUNACY**, p. 777 *n.* As to powers of revocation, see **POWER**, § 12. As to the revocation of a guarantee, see **GUARANTY**, § 5.

§ 4. **Judicial.**—When a grant of probate or letters of administration has been improperly obtained, it may be revoked by the court at the instance of a person interested. The grant is then produced at

the registry, and canceled. Coote Prob. Pr. 164 *et seq.*; Browne Prob. Pr. 244.

REVOCATION, (of power of attorney). 8 Wheat. (U. S.) 201.

— (of submission to arbitration). 3 Halst. (N. J.) 116; 1 Cow. (N. Y.) 335; 2 Barn. & Ald. 394; 5 *Id.* 507; 1 Marsh. 366; 1 Moo. 287.

— (of a will). Coxe (N. J.) 212; 4 Kent Com. 520; 1 Chit. Gen. Pr. 363.

REVOCATION AND NEW APPOINTMENT.—The appointor may reserve a power of revocation and new appointment in the deed of appointment, although not expressly authorized so to do, by the assurance creating the power; and such a power may be reserved *toties quoties*. By a revocation the original power revives. When a deed of appointment contains no power of revocation, it is absolute and cannot be revoked, although there be a power of revocation in the assurance creating the power. When a power is executed by will, an express power of revocation need not be reserved, since a will is revocable.—*Wharton*.

REVOCATION OF AGENCY.—An agency is dissolved or determined in several ways—

I. By the act of the principal, either

(a) Express, as

(1) By direct and formal writing, publicly advertised;

(2) By informal writing to the agent privately;

(3) By parol; or

(b) Implied from circumstances, as by appointing another person to do the same act, where the authority of both would be incompatible.

The exceptions to the power of the principal to revoke his agent's authority at mere pleasure, are

(1) When the principal has expressly stipulated that the authority shall be irrevocable, and the agent has also an interest in its execution.

(2) Where an authority or power is coupled with an interest, or is given for a valuable consideration, or is a part of a security, unless there is an express stipulation that it shall be revocable.

(3) When an agent's act in pursuance of his authority has become obligatory, for *nemo potest mutare consilium suum in alterius injuriam*.

II. By the agent's giving notice to his principal that he renounces the agency; but the principal must sustain no damage thereby; otherwise the agent would be responsible therefor.

III. By operation of law, as

(a) By the expiration of the period during which the agency was to exist or to have effect.

(b) By a change of condition or of state, producing an incapacity of either the principal or the agent, as

(1) Marriage of a *feme sole* principal.

(2) Mental disability established by inquisition, or where the party is placed under guardianship.

(3) Bankruptcy, excepting as to such rights as do not pass to the trustee under the adjudication.

(4) Death, unless the authority is coupled with an interest in the thing vested in the agent. See *Bailey v. Collett*, 18 Beav. 179.

(5) By the extinction of the subject of the agency.

(6) By the ceasing of the principal's powers.

(7) By the complete execution of the trust confided to the agent, who then is *functus officio*.—*Wharton*.

REVOCATION OF OFFER.—See OFFER; RETRACT.

REVOCATION OF PROBATE AND LETTERS OF ADMINISTRATION is effected in two ways: (1) By an action for the purpose; (2) on an appeal to a higher tribunal to reverse the sentence by which they are granted. 1 Wms. Ex. (7 edit.) 571 *et seq.*

REVOCATION OF WILL.—See REVOCATION, § 2.

REVOCATIONE PARLIAMENTI.—An ancient writ for recalling a parliament. 4 Inst. 44.

REVOCATUR.—It is recalled. A phrase indicating that a judgment is annulled by the court for an error of fact.

REVOKE.—See REVOCATION.

REVOLT.—An offense by seamen analogous to mutiny (*q. v.*) See, also, *United States v. Kelly*, 11 Wheat. (U. S.) 417, and authorities cited under **CONFINEMENT**.

REVOLT, (what constitutes). 1 Sprague (U. S.) 374; 4 Wash. (U. S.) 402.
 — (endeavor to make, defined). 2 Curt. (U. S.) 225; 1 Mas. (U. S.) 147; 4 Wash. (U. S.) 528; 11 Wheat. (U. S.) 417; Serg. Const. L. 344.

REWARD.—A recompense for anything done. In order to encourage the apprehending of certain felons, rewards are often bestowed on such as bring them to justice. As to advertising a reward for the return of stolen or lost property, see **ADVERTISEMENT**, § 3.

REWARD, (right of finder to sue for). 6 Mass. 344; 1 Nev. & M. 418.

— (when cannot be recovered by suit). 1 Mau. & Sel. 108.

— (offered by public advertisement is a contract). 4 Barn. & Ad. 621.

REX.—King; the king.

Rex est legalis et politicus (Lane 27): The king is both a legal and political person.

Rex est lex vivens (Jenk. Cent. 17): The king is the living law.

Rex est major singulis, minor universis (Bract. l. 1 c. viii): The king is greater than any single person—less than all.

Rex hoc solum non potest facere quod non potest injuste agere (11 Co. 72): The king can do everything but an injustice.

Rex non debet esse sub homine, sed sub Deo et sub lege; quia lex facit regem (Bract. l. 1 fo. 5): The king ought to be under no man, but under God and the law; because the law makes a king.

Rex non potest peccare (2 Roll. 304): The king can do no wrong.

Rex nunquam moritur: The king never dies, i. e. the person only is changed; the sovereign always exists.

RHANDIR.—A part in the division of Wales before the Conquest; every township comprehended four gavels, and every gavel had four rhandirs, and four houses or tenements constituted every rhandir. Tayl. Hist. Gav. 69.

RHETORIC.—The art of speaking not merely correctly, but with art and elegance. —Latham. See Whate. El. Rhet. Introd. § 1.

RHODIAN LAW.—A code of maritime law made by the people of Rhodes.

RIAL.—A piece of gold coin current for 10s. in the reign of Henry VI., at which time there were half-rials, and quarter-rials, or rial-farthings. In the beginning of Queen Elizabeth's reign, golden rials were coined at 15s. a-piece; and in James I. there were rose-rials of gold at 30s., and spur-rials at 15s. Lownd. Ess. Coins 38.

RIBAUD.—A rogue; vagrant; whoremonger; a person given to all manner of wickedness. —Cowell.

RIBBON MEN.—Associations or secret societies formed in Ireland, having for their object the dispossession of landlords by murder and fire-raising. (See Alison's Hist. of Europe from 1815 to 1852, vol. IV. c. xx. § 13.)—Wharton.

RIBBONS, (in act of congress). 4 Cliff. (U. S.) 122.

RICE, (is not corn). 5 Bos. & P. 213.

RICHARD ROE, otherwise TROUBLESOME.—The casual ejector and fictitious defendant in ejectment, whose services are no longer invoked. See **JOHN DOE**; **EJECTMENT**, § 2.

RIDER.—A rider, or rider-roll, signified a schedule or small piece of parchment annexed to some part of a roll or record. In familiar use any kind of schedule or writing annexed to a document which cannot well be incorporated in the body of such document is called a "rider."

RIDER-ROLL.—See **RIDER**.

RIDING ARMED.—The offense of riding or going armed with dangerous or unusual weapons, is a misdemeanor tending to disturb the public peace by terrifying the good people of the land. 4 Steph. Com. (7 edit.) 357.

RIDING CLERK.—One of the six clerks in Chancery, who, in his turn, for one year, kept the controlment books of all grants that passed the great seal. The six clerks were superseded by the clerks of records and writs.

RIDINGS.—Corrupted from *trithings*. The names of the parts or Divisions of Yorkshire, which, of course, are three only, viz.: East Riding, North Riding, and West Riding.

RIENS IN ARRERE.—Nothing in arrear. The name of the plea in bar used by the plaintiff in an action of replevin when he alleges that the rent has been paid or satisfied before the distress was taken. The reply which has taken the place of the plea in bar under the new English practice is sometimes called by the same name. Woodf. Land. & T. 476. See **REFLEVIN**.

RIENS PASSA PER LE FAIT.—Nothing passed by the deed. The proper form of plea by which to deny the validity or effect of a conveyance.

RIENS PER DESCENT.—The plea pleaded under the common law practice by an heir-at-law sued for a debt of his ancestor when he had no lands by descent. Arch. Pr. 1013. See JUDGMENT, § 12.

RIER, or REER-COUNTY.—Close county, in opposition to open county. It appears to be some public place which the sheriff appoints for the receipt of the king's money after the end of the county court. Fleta says it is *dies crastinus post comitatum*.—*Encycl. Lond.*

RIFFLARE.—To take away anything by force.

RIFLETUM.—A coppice or thicket.—*Cowell.*

RIGHT.—

§ 1. In general.—A right, in its most general sense, is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. "We may, therefore, define a 'legal right' as a capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others." (Holl. Jur. 56.) It follows that every right involves (1) a person invested with the right, or entitled; (2) a person or persons on whom that right imposes a correlative duty or obligation,* (3) an act or forbearance which is the subject-matter of the right.† In some cases there is also (4) an object, *i. e.* a person or thing to which the right has reference, as in the case of ownership.

With reference to their ultimate object or purpose, rights and duties are either primary [substantive, original], or secondary [adjective, sanctioning].

§ 2. Primary rights are those which can be created without reference to rights already existing. Thus, if A. contracts to pay me \$50, my right to the payment of that sum is a primary right. Primary

rights are of two classes: (1) Those rights to which every member of the community is *primâ facie* entitled; they consist of (a) personal (or absolute) rights (1 Bl. Com. 123), *e. g.* the right to life, health and liberty of action (see TORT), and (b) public rights, which are those rights by which every member of the community is *primâ facie* entitled to use certain things which either belong to the State, or, if they belong to private persons, are subject to the right of public user; such are the rights of the public in respect of the sea, navigable rivers, highways, public parks, &c. (See the various titles, and PUBLIC JURIS.) (2) Those rights which arise from relations other than membership of a community, and include the ordinary rights arising from ownership, contract, marriage, and similar relations. *Id.*

§ 3. Secondary rights can only arise for the purpose of protecting or enforcing primary rights. They are either preventive [protective] or remedial [reparative].

§ 4. Preventive or protective secondary rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a court of law for their enforcement, and extrajudicial when they are capable of being exercised by the party himself. The right to prevent a threatened injury by injunction, the right to take proceedings to obtain a judicial recognition of a right which might be lost by lapse of time or adverse user, the right to institute proceedings for the administration of the estate of a deceased person or the assets of an insolvent person or corporation, and the right to security against the commission of a crime, are instances of judicial preventive rights, and the right of self-defense is an instance of an extrajudicial preventive right. See, also, ADMINISTRATION; DE BENE ESSE; LEGITIMACY; NE EXEAT REGNO; PERPETUATION OF TESTIMONY.

§ 5. Remedial, or reparative secondary rights are also either judicial or ex-

*It is sometimes said (*e. g.* 1 Steph. Com. 136) that the correlative of "right" is "wrong," but this is hardly correct; a wrong is a right plus a violation; in other words, a right may exist without a wrong. Possibly the ethical use of the words led to the confusion.

†Mr. John Stuart Mill (3 Dissert. and Disc.) suggests that the idea of benefit to the person entitled is involved in the conception of a right, but this is erroneous. The question of benefit is one for the legislator, not for the jurist.

trajudicial. They may further be divided into (1) rights of restitution or restoration, which entitle the person injured to be replaced in his original position; (2) rights of enforcement, which entitle the person injured to the performance of an act by the person bound; and (3) rights of satisfaction or compensation. A right of entry or re-entry, is an extrajudicial right of restitution, a lien is an extrajudicial right of enforcement, a right of distress or retainer is an extrajudicial right of satisfaction, the right of bringing an action of ejectment or detinue is a judicial restitutive right, the right of obtaining an injunction for specific performance and the right to compel the payment of a debt are judicial rights of enforcement, and the right of bringing an action of damages for breach of contract or tort is a judicial right of satisfaction. See REMEDY.

With reference to the nature of the obligation which they impose, rights are either *in rem* [real rights, general rights, rights against the whole world, *jura in rem*,] or *in personam* [personal rights, relative rights, rights against determinate persons, *jura in personam*].

§ 6. **Rights in rem.**—A right *in rem* is one which imposes an obligation on persons generally, *i. e.* either on all the world or on all the world except certain determinate persons. Thus, if I am entitled to exclude all persons from a given piece of land, I have a right *in rem* in respect of that land; and if there are one or more persons, A., B., and C., whom I am not entitled to exclude from it, my right is still a right *in rem*. So if I am entitled to the services of a servant, I have a right *in rem* which obliges all other persons not to interfere wrongfully with that relation. (See MASTER AND SERVANT, § 3; SERVICE.) A right *in rem* is always negative.

§ 7. **Rights in personam.**—A right *in personam* is one which imposes an obligation on a definite person. Thus, if A. agrees to pay me \$50, my right to that sum against A. is a right *in personam*, belonging to the class of primary rights (*supra*,

§ 2). My right to liberty of action, so long as I do not interfere with other persons' rights, is a right *in rem*; if B. infringes that right by imprisoning or assaulting me, I acquire a right to recover damages against him, which is a right *in personam* belonging to the class of secondary rights. *Supra*, § 5.

§ 8. Primary rights *in personam* are either affirmative [positive] or negative, according as they require for their performance an act or a forbearance. Thus, if A. contracts with B. not to carry on business in a certain place, B. has a negative right against A.

§ 9. Primary rights *in personam* are also subject to the following divisions: absolute and conditional, legal and equitable, personal and transmissible, and of perfect and imperfect obligation.* See the various titles, and CONTRACT, § 11; OBLIGATION, §§ 3, 4.

§ 10. "Right" and "estate."—"Right" is used by the old writers on real property law in the technical sense of a right which an owner of land has when he has been disseised, so that he has only the right of recovering possession either by entry or action. His estate was then said to be turned to a right. (Co. Litt. 345a; Archer's Case, 1 Co. 67a.) If A. was disseised by B., and B. died while in possession, so that the land descended to his heir, A. could not recover possession by entry, but had to bring a possessory action. (See DESCENT CAST.) If A. further suffered a certain time to elapse, or had judgment given against him in a possessory action, he could no longer recover by a possessory action, but only by an action on the right, meaning the right of ownership as opposed to the right to possession. Hence his estate was said to be turned to a mere, bare or naked right. (Co. Litt. 266a, notes to 239a and 278b.) These distinctions no longer exist, real actions having been abolished.

§ 11. "Right," like "title" (*q. v.*), sometimes connotes the idea of a mode of acquisition. Thus, a person is said to hold

*As to rights generally, see Austin's Jurisprudence, Markby's Elements of Law, and Holland's Jurisprudence, *passim*.

The divisions of rights into public and private,

and into normal and abnormal, are not given here, because they are merely another way of classifying the law itself. See LAW; STATUS.

or own property in his own right, or in right of another (*in auter droit*). If it descends to him, or he purchases it, he obtains it in his own right; but if he acquires it as representing another person, he is said to take it *in auter droit*. The principal mode of taking personal property *in auter droit* is by executorship or administration, for the executor or administrator holds the goods of the deceased as his representative. So, in many jurisdictions, when a man marries a woman seised of land in fee in her own right, he gains an estate of freehold in her right, lasting during the coverture. (Co. Litt. 350b.) The difference is of importance with regard to the law of merger (*q. v.* § 3).

§ 12. **Of common right.**—In the phrase “of common right,” the word “right” seems to be used in a somewhat similar sense. Thus, when it is said that the remedy of distress for arrears of a rent service exists of common right, (Co. Litt. 142a; where, however, the phrase “common law” is said to mean “common law,”) and that every freehold tenant of a manor has a right of common of pasture appendant of common right (*Id.* 122a), it is meant that the right is created by law, and not by agreement between the parties.

§ 13. **“Right,” and “wrong.”**—“Right” is used in law, as well as in ethics, as opposed to “wrong.” Thus, a person may acquire a title by wrong. See **TITLE**.

RIGHT, (defined). 6 Neb. 37, 40; 7 How. (N. Y.) Pr. 124, 130.

— (synonymous with “estate”). 2 Cal. (N. Y.) 345.

— (not synonymous with “law”). 46 Conn. 364.

RIGHT, ALL MY, (devise of). 6 Binn. (Pa.) 97; 4 Moo. & P. 445.

— (in a release). 2 Pres. Est. 62.

RIGHT ACCRUED, (in a statute). 3 Cal. (N. Y.) 325.

RIGHT CLOSE, WRIT OF.—An abolished writ which lay for tenants in ancient demesne, and others of a similar nature, to try the right of their lands and tenements in the court of the lord exclusively. 1 Steph. Com. (7 edit.) 224.

RIGHT, DEBT OR DUTY, (in a statute). 50 Vt. 99.

RIGHT HEIRS, (who are). 53 Md. 550.

— (in a deed). 8 Ves. 235.

— (in voluntary settlement). 14 Ch. D. 614.

— (in a will). 10 Ch. D. 146; 2 P. Wms. 135; 1 T. R. 630; 2 Ves. 214; 4 *Id.* 766.

RIGHT IN COURT.—See **RECTUS IN CURIA**.

RIGHT OF ACTION.—

§ 1. The right to bring an action. Thus, a person who is wrongfully dispossessed of land has a right of action to recover it. See **ACTIO PERSONALIS MORITUR CUM PERSONA**; **CAUSE OF ACTION**; **CHOSE IN ACTION**; **REMEDY**.

§ 2. In the old writers, “right of action” is commonly used to denote that a person has lost a right of entry (*q. v.*), and has nothing but a right of action left. Co. Litt. 363b. See **RIGHT**, § 10.

RIGHT OF DISCUSSION.—See **DISCUSSION**.

RIGHT OF ENTRY.—

§ 1. A right of entry is the right of taking or resuming possession of land by entering on it in a peaceable manner. See **ENTRY**.

Rights of entry are of two kinds—

§ 2. **Original, or mere.**—An original or mere right of entry is a right of entry and nothing more. Thus, where a person has been disseised of land, or where an estate has determined, so that he becomes entitled to the possession of the land, he has an original right of entry. This kind of right was formerly inalienable, but may now be disposed of, in England, by deed. (Stat. 8 and 9 Vict. c. 106, § 6 (see cases cited in note (6) as to the construction of this section); Wms. Seis. 124; Litt. § 414 *et seq.*) It is sufficient to support a contingent remainder, if the estate of the disseisee was itself sufficient. Archer's Case, 1 Co. 66b.

§ 3. **On breach of condition, &c.**—A right of entry, by the exercise of which an existing estate is defeated, is a right attached to a reversion. It was formerly called a “title of entry,” to distinguish it from an original right of entry, because it could not be enforced by action, and was, therefore, not a right in the technical sense. (Co. Litt. 240a, 345b; Fearn's Rom. 381 n.) It is also sometimes called a “right of re-entry.” The commonest instance of this kind of right occurs in an ordinary lease, in which it is usual to reserve to the lessor the right of determining the lease by re-entry, if the lessee fails

to pass the same or perform the covenants. (Litt. § 325.) This kind of right is inalienable by itself, although the benefit of the condition passes on an assignment of the reversion, so that the assignee can take advantage of any breach of the condition committed after the assignment. *Hunt v. Bishop*, 8 Ex. 680; *Hunt v. Kennant*, 9 Ex. 640; *Wms. Seis.* 125; *Woodl. Land.* & T. 289. *See* CONTINUAL CLAIM; DESCENT CAST; RIGHT OF ACTION; TITLE.

RIGHT OF EXPECTANCY, (in a deed). 2 Hill (N. Y.) 641.

RIGHT OF PASTURAGE USUALLY ENJOINED, (in a statute). L. R. 9 Q. B. 162.

RIGHT OF POSSESSION. -- *See* POSSESSION, § 3.

RIGHT OF PROPERTY, (what is). 12 Allen (Mass.) 348.

RIGHT OF REPRESENTATION AND PERFORMANCE.—By the Acts 3 and 4 Will. IV. c. 15, and 5 and 6 Vict. c. 45, the author of a play, opera, or musical composition, or his assignee, has the sole right of representing or causing it to be represented in public at any place in the British dominions during the same period as the copyright in the work exists. The right is distinct from the copyright, and requires to be separately registered. (Shortt Copyr. 114 *et seq.*; *Coryton on Stage-Right*.) At one time they were distinguished by being called "book copyright" and "stage copyright" (*Reade v. Conquest*, 11 Com. B. (N. s.) 479; *see* STAGE-RIGHT), but this is inaccurate.

§ 2. The Act 7 and 8 Vict. c. 12 provides for the protection, by order in council, of the right of representing or performing in this country dramatic pieces or musical compositions first publicly represented or performed in a foreign country.

RIGHT OF SEARCH.—*See* SEARCH.

RIGHT OF WAY.—*See* RULE OF THE ROAD; WAY.

RIGHT OF WAY, (defined). 75 Ill. 616; 50 Wis. 71, 76.

— (in a statute). 2 Barb. (N. Y.) 432.

RIGHT OF WAY OF AN ALLEY, (in a deed). 9 N. W. Rep. 426.

RIGHT OR INTEREST IN LAND, (a reversion is). 4 Mas. (U. S.) 467, 488.

RIGHT PATENT.—An obsolete writ, which was brought for lands and tenements, and not for an advowson, or common, and lay only for an estate in fee-simple, and not for him who had a lesser estate, as tenant in tail, tenant in frank marriage, or tenant for life.—*F. N. B.* 1.

RIGHT, POWER, OR PRIVILEGE, (in a local government act). L. R. 7 Q. B. 680.

RIGHT, TITLE AND INTEREST, (conveyance of). 3 Wheat. (U. S.) 452.

— (in a will). 4 Wheel. Am. C. L. 382; 1 Salk. 234.

RIGHT, TITLE, INTEREST, CLAIM AND DEMAND, (in a deed). 1 Yeates (Pa.) 154.

RIGHT TO BEGIN.—On the hearing or trial of a cause, or the argument of a demurrer, petition, &c., the right to begin is the right of first addressing the court or jury. The right to begin is frequently of importance, as the counsel who begins has also the right of replying or having the last word after the counsel on the opposite side has addressed the court or jury. This rule is subject, in England, to the exception that where the second counsel at a trial before a jury does not call witnesses, the counsel who began has no right of reply.

The general rule is, that the plaintiff has the right to begin if the affirmative of the issue is on him, or if the *onus* of proving any one material issue, or of proving the amount of damages, rests on him. Otherwise, if the affirmative of the issue lies on the defendant, he has the right to begin. Arch. Pr. 354, 368.

RIGHT TO LAND, (implies what). 8 Wheat. (U. S.) 76.

RIGHT TO REDEEM, (a grant of, passes covenants real). 3 Metc. (Mass.) 81.

RIGHT, WRIT OF.—The highest writ in the law, sometimes called, to distinguish it from others of the droitual class, the "writ of right proper." Abolished, in England, by 3 and 4 Will. IV. c. 27. 3 Steph. Com. (7 edit.) 392, 415 n.; 4 *Id.* 412.

RIGHTS, (defined). Hob. 242.

RIGHTS ACCRUED, (what are not). 41 Iowa 112.

RIGHTS AND PRIVILEGES, (in bill of rights). 18 Minn. 199.

RIGHTS, BILL OF.—*See* BILL OF RIGHTS.

RIGHTS, PETITION OF.—*See* PETITION OF RIGHTS.

RING, (in a will). 1 Atk. 416 n.; 1 Ves. & B. 364.

RINGBONE, (defined). Oliph. Hors. 48, 50.

RING-DROPPING.—A trick variously practiced. One mode is as follows, the circumstances being taken from Patch's Case, 2 East P.

C. 678: The prisoner, with accomplices, being with their victim, pretend to find a ring wrapt in paper, appearing to be a jeweler's receipt for a "rich brilliant diamond ring." They offer to leave the ring with the victim if he will deposit some money and his watch as a security. He lays his watch and money, is beckoned out of the room by one of the confederates, while the others take away his watch, &c. This is a larceny. *See, further*, 2 Russ. Cr. & M. (4 edit.) 225 *et seq.*—*Wharton*.

RINGING THE CHANGES.—A trick practiced by a criminal, by which, on receiving a good piece of money in payment of an article, he pretends it is not good, and, changing it, returns to the buyer a counterfeit one, as in *Frank's Case*, 2 Leach 64: A man having bargained with the prisoner, who was selling fruit about the street, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to test it by biting, and returning a shilling, said it was a bad one. The buyer gave him a second, which he treated like the first, and returned with the same words, and so with a third shilling. The shillings he returned being bad, this was an uttering of false money. (1 Russ. Cr. & M. (4 edit.) 125.)—*Wharton*.

RINGS.—*See* GIVING RINGS; SERJEANTS AT LAW.

RIOT.—

§ 1. A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled by a breach of the peace, and to the terror of the public. A lawful assembly may become a riot if the persons assembled form and proceed to execute an unlawful purpose, to the terror of the people, although they had not that purpose when they assembled. But a riot cannot take place unless three persons at least are present. Every person convicted of riot is liable to be sentenced to fine and imprisonment. *Steph. Cr. Dig.* 41; 1 Russ. Cr. & M. 364 *et seq.*, 389.

§ 2. **Reading the Riot Act.**—In English law, where twelve or more persons are committing a riot, it is the duty of the mayor, sheriff, and certain other officers to make a proclamation in the queen's name, commanding them to disperse (commonly called reading the Riot Act); and every person who obstructs the making of the proclamation, or continues to riot for one hour afterwards, is guilty of felony, and liable to penal servitude for life, or three years' imprisonment with hard labor. (Stat. 1 Geo. I. st. 2, c. 5; 1 Russ. Cr. & M. 374.) Similar proclamations have been occasionally made in America during public disturbances.

§ 3. **Riotous injuries to property.**—The riotous demolition, or attempted demolition, of any building, machinery, or mining plant, is felony, punishable in England with penal servi-

tude for life, or two years' imprisonment with hard labor. Riotous damage or injury to any building, machinery, or mining plant, is a misdemeanor, punishable with seven years' penal servitude, or two years' imprisonment. (Stat. 24 and 25 Vict. c. 97; 1 Russ. Cr. & M. 368. *See, also*, Stat. 33 Geo. III. c. 67.) Similar offenses are punished by statute in the several States. *See* AFFRAY; ROUT; UNLAWFUL ASSEMBLY.

Riot, (defined). 42 Ind. 273, 275; 2 McCord (S. C.) 117; 8 Wheel. Am. C. L. 1; 3 Crim. L. Mag. 225.

— (what is). 10 Mass. 518; Add. (Pa.) 190; 1 Hill (S. C.) 361; 1 Oreg. 163; 2 Campb. 358; 11 Mod. 101, 116.

— (what is not). 1 Cranch (U. S.) C. C. 140.

RIOT ACT.—*See* Riot, § 2.

RIOTOUS AND TUMULTUOUS MANNER, (in a statute). 59 Ind. 572.

RIOTOUSLY.—A technical word, properly used in indictments for riot. It of itself implies force and violence. 2 Chit. Crim. L. 489.

RIPA.—In the civil law, the bank of a river.

RIPARIA.—A mediæval-Latin word, which Lord Coke takes to mean water running between two banks; in other places it is rendered bank.

RIPARIAN.—That which relates to or is connected with the bank of a river. (Not the bed of the river: *Lyon v. Fishmongers' Co.*, 1 App. Cas. 683.) A riparian proprietor or owner is a person who owns land through or past which a river runs; and riparian rights are those arising from such a property. The riparian owner whose land is nearer the source of the river is called the "upper riparian owner" as compared with him whose land is more remote from the source. *Swindon Waterworks Co. v. Wilts, &c., Co.*, L. R. 7 H. L. 697.

As to the rights of riparian owners, *see* WATER.

RIPARIAN NATIONS.—In international law, those who possess opposite banks or different parts of banks of one and the same river.

RIPARIAN PROPRIETORS, (defined). 22 Pick. (Mass.) 355.

RIPARIAN RIGHTS.—*See* RIPARIAN; WATER.

RIPTOWELL, or REAPTOWEL.—A gratuity or reward given to tenants after they had reaped their lord's corn or done other customary duties.—*Cowell.*

RIPUARIAN LAWS.—A code of laws belonging to the Franks, who occupied the country upon the Rhine.

RIPUARIAN PROPRIETORS.—Owners of lands bounded by a river or water-course. *See* **RIPARIAN.**

RISK.—

§ 1. In the law of marine insurance, risk denotes (1) a danger or peril insured against; (2) the possibility of the loss happening under such circumstances as to make the underwriter liable, (*see* *Ionides v. Pender*, L. R. 9 Q. B. 538;) when this possibility has arisen (*e. g.* by the departure of the vessel), the risk is said to commence or attach (*Maud. & P. Mer. Sh.* 428), and the assured's interest is said to be "at risk." *Allison v. Bristol, &c., Co.*, 1 App. Cas. 209.

§ 2. **Entire—Divided.**—When the insurance is of such a nature that the peril which would make the underwriter liable for a total loss may happen as soon as the risk commences, the risk is said to be "entire;" if, on the other hand, some circumstance which would have contributed to the happening of the peril insured against has not taken place, the risk is "divided" or "apportionable." For instance, if the ship deviate, the underwriter is discharged, but inasmuch as if she had been lost before the deviation he would have been liable, he has run the whole risk, and it is, therefore, said to be "entire;" but if part of the risk insured against has not been run (as where part of the cargo insured has not been shipped), the risk is "divided," and the assured is entitled to a return of that proportion of the premium which covered the risk not run. *Maud. & P. Mer. Sh.* 429; *Sm. Merc. L.* 398 *et seq.*

Risk, (stock subscription is not). 18 Kan. 369.

RIVAGE, or RIVAGIUM.—A toll anciently paid to the crown for the passage of boats or vessels on certain rivers.—*Cowell.*

RIVEARE.—To have the liberty of a river for fishing and fowling.—*Cowell.*

RIVER.—

§ 1. **Public.**—A public navigable river is one which is actually navigable and (according to English law) in which the tide ebbs and flows; all other rivers on which navigation is carried on are private rivers over which the public have acquired a right or easement of navigation. (*Couls. & F. Waters* 58.) The ownership of the bed of a public navigable river is *primâ facie* in the sovereign. As to the right of navigation, *see* **NAVIGABLE.** As to the right of fishing in a public river, *see* **FISHERY**, §§ 2, 5.

§ 2. **Private.**—All rivers and streams above the flow and reflow of the tide are *primâ facie* private, although many have become by immemorial user or by statute subject to public rights of navigation. The right of navigation gives no right of property, or of fishing.

§ 3. When a private river runs through land belonging to one person, he is *primâ facie* the owner of the bed; when a private river separates the lands of two owners, each is *primâ facie* owner of the soil of the bed to the middle of the stream (*ad medium filum aquæ*). (*Couls. & F. Waters* 92 *et seq.*) As to the effect of alluvion and dereliction, *see* those titles; *see* further as to rivers, and as to the rights of riparian owners, title **WATER.**

§ 4. The pollution of rivers is forbidden, in England, by the Rivers Pollution Act, 1876, and in the several States by special statutes.

RIVER, (defined). 14 N. H. 467; *Ang. Waters*. § 3 n.

—— (title to an island in). 5 Cow. (N. Y.) 219.

RIVER-FEEDER, (in a lease). 13 Pick. (Mass.) 50.

RIXA.—In the civil law, a dispute or quarrel.

RIXATRIX COMMUNIS.—A common scold (*q. v.*) 4 Steph. Com. (7 edit.) 276.

ROAD.—A way or passage; a highway; a secure place for the anchoring of vessels.

ROAD, (defined). 2 Hughes (U. S.) 17; 30 Conn. 118, 120.

—— (distinguished from "path"). 11 Wheat. (U. S.) 230.

—— (synonymous with "highway"). 3 Yeates (Pa.) 421.

ROAD, (not synonymous with "way"). 3 Nev. 361.

— (in a statute). 23 Pick. (Mass.) 201; 2 T. R. 232, 234.

— (bridges are essential parts of). 23 Wend. (N. Y.) 258.

— (when becomes a public highway). 7 Johns. (N. Y.) 106.

— (title to land over which it passes). 12 Wend. (N. Y.) 371.

ROADS, (in a statute). 4 Zab. (N. J.) 486.

ROADSTEAD, (defined). 2 Hughes (U. S.) 17.

ROBBERY.—*TEUTONIC: roup; ANGLO-SAXON: reaf*, the act of violently taking away something from the person of another, especially armor or clothing from a vanquished enemy. (*Schmitt. Worth. s. v. Raub*) Spelman and Coke (Co. Litt 284a) derive it from *roba*, while in truth *roba* comes from *roup*. Littré *s. v. Derober*, Robe.

Robbery is where a person, either with violence or with threats of injury, and putting the person robbed in fear, takes and carries away a thing which is on the body, or in the immediate presence of the person from whom it is taken, under such circumstances that in the absence of violence or threats the act committed would be a theft. Steph. Cr. Dig. 208; 2 Russ. Cr. 78.

The punishment for robbery is imprisonment, varying according to the nature of the violence or threats used.

ROBBERY, (defined). 3 Wash. (U. S.) 209; 58 Ala. 98; 15 Ind. 288; 23 Id. 21; 3 Coldw. (Tenn.) 350; 12 Tex. App. 277; 2 East P. C. 707.

— (what is). 7 Mass. 242; 59 Mo. 318; 83 N. Y. 418.

— (what is not). 35 Ind. 460; 8 Sm. & M. (Miss.) 401.

— (indictment for). 39 Ga. 583; 58 Mo. 581.

— (in a statute). 1 Baldw. (U. S.) 78; 3 Wheat. (U. S.) 680; 2 Wheel. Cr. Cas. xxx.

— (on the high seas). Serg. Const. L. 335.

ROBBERY OF THE MAIL, (in a statute). 2 Wheel. Cr. Cas. xlv.

ROBERDSMAN, or ROBERTSMAN.—A bold and stout robber or night thief, so called from Robin Hood, the famous robber, but perhaps a corruption of "robber's man." 3 Inst. 197.

ROD.—A lineal measure of sixteen feet and a half, otherwise called a "perch."

ROD KNIGHTS.—Certain servitors who held their land by serving their lords on horseback.—*Cowell*.

ROGATIO TESTUM, in making a nuncupative will, is where the testator formally calls upon the persons present to bear witness that he has declared his will. Wms. Ex. 116; Browne Prob. Fr. 59. *See* WILL.

ROGATION.—In the civil law, the demand by the consul or tribunes of a law to be passed by the people.

ROGATION WEEK.—The second week before Whit Sunday, thus called from three fasts observed therein, the Monday, Tuesday, and Wednesday, called "Rogation days," because of the extraordinary prayers then made for the fruits of the earth, or as a preparation for the devotion of Holy Thursday.

Rogationes, questiones, et positiones debent esse simplices (Hob. 143): Demands, questions, and claims ought to be simple.

ROGATORY LETTERS.—*See* LETTERS ROGATORY.

ROGUE.—A wandering beggar; vagrant; vagabond. (*See* VAGRANCY. 3 Steph. Com. (7 edit.) 57, 122; 4 Id. 237.) As to when it is a slander to call a man a "rogue," *see* Add. Torts (3 edit.) 766.

ROGUE, (when an actionable word). 3 Harr. & J. (Md.) 33; 1 Johns. (N. Y.) Cas. 129; 8 Wheel. Am. C. L. 109, 111.

ROGUS.—A funeral pile; a great fire wherein dead bodies were burned; a pile of wood.—*Clarus. 5 Hen. III.*

ROLE D'EQUIPAGE.—In French mercantile law, the list of a ship's crew; a muster-roll.

ROLL.—*See* ROLLS, § 1.

ROLL OF COURT.—*See* ROLLS, § 4.

ROLLING STOCK.—In England, the rolling stock of a railway company cannot be taken in execution, (*see* Midland Waggon Co. v. Potteries Rail. Co., 6 Q. B. D. 36; *see* EXECUTION, § 7; and the rolling stock of a railway company, when in use in a manufactory, pier, mine, or similar place belonging to some person or company other than the railway company, cannot be taken in distress for rent payable by the tenant of the manufactory, pier, mine, &c., provided it is conspicuously marked as belonging to the railway company. Stat. 35 and 36 Vict. c. 50.

ROLLS.—

§ 1. In ancient times all the principal records were written on pieces of parchment stitched together so as to form a long continuous piece, which was rolled up when not in use. Hence, such records were called "rolls." This practice was followed up to modern times in the Court of Chancery, when decrees were not unfrequently enrolled, (*see* ENROLMENT, § 8,) and seems to be still employed, in England, in the case of recognizances entered

into by receivers, liquidators, &c., appointed by the High Court. In most other cases, however, the practice of writing on rolls has been abandoned for the more convenient method of inscribing in books.

§ 2. **Parliamentary.**—The Parliament Rolls are the records of the proceedings of parliament, especially acts of parliament, and therefore when any misprint appears in a printed copy of a statute, the parliament roll is consulted to correct the error. Formerly there was a distinction between the parliament rolls and the statute rolls (1 Bl. Com. 182); but this seems not to exist at the present day. See *In re Venour's Settled Estates*, 2 Ch. D. 525.

§ 3. **Patent and closed rolls, &c.**—The Patent Rolls contain grants of liberties, privileges, lands, offices, &c., creations of peers, and other letters patent (*q. v.*), while the Close Rolls are the records of letters close (*q. v.*) (Report on Public Records, 1837, 67; 1 Steph. Com. 618.) There are also numerous other kinds of rolls of a similar nature, such as the charter rolls, fine rolls, liberate rolls, perambulation rolls, hundred rolls, &c. Report on Public Records, 1837, 67; 1 Steph. Com. 618.

The rolls above described form part of the public records of the kingdom, and are kept at the Public Record Office in London.

§ 4. **Court rolls of manor.**—The court rolls of manors were, in ancient times, long pieces of parchment, rolled up into convenient bundles; but in modern times what is called the court roll is neither more nor less than a large book in which the steward enters every transaction relating to the copyhold lands of the manor. Wms. Seis. 37. See *COPYHOLD*, § 1.

§ 5. **Roll of solicitors.**—The admission of every solicitor of the English Supreme Court requires to be enrolled in a roll or book kept for that purpose by the clerk of the Petty Bag. (Solicitors Act, 1877; Reg. 2, Nov. 1875; Arch. Pr. 63.) A solicitor is said to be "struck off the rolls" when his name is taken out of this roll, either on his own application, where he wishes to cease practicing as a solicitor, or on the application of some one else, when he has been guilty of misconduct. A similar practice of enrolling the names of lawyers admitted to practice, and of striking them off the roll for misconduct, exists in the several States. See *DISBAR*.

§ 6. **Common law practice.**—In the common law practice, the steps in every action were entered on a roll, which was called the "plea roll," the "issue roll," and the "judgment roll," according to the stage which the action had reached. This kind of roll no longer exists, the "cause book" and "judgment book" having taken its place. Sm. Ac. 59 *et seq.*

ROLLS OF PARLIAMENT.—See *ROLLS*, § 2.

ROLLS OF THE EXCHEQUER.—There are several in this court relating to the revenue of the country.

ROLLS OF THE TEMPLE.—In each of the two Temples is a roll called the calves-head roll, wherein every benchman, barrister and student is taxed yearly; also meals to the cook and other officers of the houses, in consideration of a dinner of calves-head, provided in Easter Term.—*Orig. Jurid.* 199.

ROLLS OFFICE OF THE CHANCERY.—An office in Chancery Lane, London, which contains rolls and records of the High Court of Chancery, the master whereof is the second person in the Chancery, &c. The Rolls Court was there held, the master of the rolls sitting as judge; and that judge still sits there as a judge of the Chancery Division of the High Court of Justice.

This house or office was anciently called "*Domus Conversorum*," as being appointed by King Henry III. for the use of converted Jews, but their irregularities occasioned King Edward II. to expel them thence, upon which the place was deputed for the custody of the rolls.—*Encycl. Lond.*

ROMA PEDITÆ.—Pilgrims that traveled to Rome on foot. Mat. Paris, A. D. 1250.

ROMAN CATHOLICS.—The only disabilities to which Roman Catholics are now subject, in England, seem to be inability to present to a benefice, and incapacity to hold certain public offices, especially that of lord chancellor, lord lieutenant of Ireland, or any office in the Church of England or Scotland, or in the ecclesiastical courts, or in the universities, colleges or public schools of the kingdom. Stat. 10 Geo. IV. c. 7; 2 Steph. Com. 711.

ROMAN LAW.—The civil law comprised in the Digest, Code, and Institutes of Justinian is so called. It has no authority in England, otherwise than as it is approved by the courts as being consistent with honor, in the absence of any statute or common law principle to the contrary. See *CIVIL LAW*, § 2.

ROMAN LAW OF DESCARTES.—See *Hale C. L.* 29.

ROME-SCOT, or ROME-PENNY.—Peterpence (*q. v.*)—*Cowell*.

ROMNEY MARSH.—A tract of land, in Kent, governed by certain ancient and equitable laws of sewers, from which commissioners of sewers may receive light and direction. 4 Inst. 276; 3 Steph. Com. (7 edit.) 296.

ROOD, or HOLY ROOD.—The holy cross.

ROOD OF LAND.—The fourth part of an acre in square measure, or one thousand two hundred and ten square yards.

Room, (not a public place). 4 Ohio St. 467. (N. J.) 202, 213. (devise of the use of). 1 Harr.

ROOMS, RESERVING TWO, (in a will). 3 Watts (Pa.) 240.

ROOT OF DESCENT.—The same as "stock of descent." See DESCENT, § 3 *et seq.*

ROOT OF TITLE.—The document with which an abstract of title properly commences is called the "root" of the title. See TITLE.

Roots, (in a policy of insurance). 7 Johns. (N. Y.) 385; 8 Wheel. Am. C. L. 240.

ROS.—A kind of rushes, which some tenants were obliged by their tenure to furnish their lords withal.—*Cowell*.

ROSLAND.—Heathy ground, or ground full of ling; also, watery and moorish land. 1 Inst. 5.

ROSTER.—A list of persons who are to perform certain legal duties when called upon in their turn. In military affairs it is a table or plan by which the duty of officers is regulated.

ROTA.—(1) The system by which succession to the functions of a temporary office is regulated among the persons who are to discharge them. (2) The name of two ancient courts, one held at Rome and the other at Genoa.

ROTHER-BEASTS.—Oxen, cows, steers, heifers and such like horned animals.—*Cowell*.

ROTTEN BOROUGHS.—Small boroughs, in England, which, prior to Reform Act, 1832, returned one or more members.

ROTULUS WINTONIAE.—The roll of Winton. An exact survey of all England, made by Alfred, not unlike that of Domesday; and it was so called for that it was kept at Winchester, among other records of the kingdom, but this roll time has destroyed. Ingulph. Hist. 516.

ROUND-ROBIN.—A circle divided from the center, like Arthur's round table, whence its supposed origin. In each compartment is a signature, so that the entire circle, when filled exhibits a list, without priority being given to any name. A common form of round-robin is simply to write the names in a circular form.—*Wharton*.

ROUP.—In the Scotch law, a sale by auction.—*Bell Dict. voc. Auction*.

ROUT.—A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled. (Steph. Cr. Dig. 41; 1 Russ. Cr. 372.) It is, therefore, between an unlawful assembly and a riot (*q. v.*) Taking part in a rout seems to be a misdemeanor at common law. *Id.* 389. See UNLAWFUL ASSEMBLY.

Rout, (defined). 8 Wheel. Am. C. L. 1 n.; 3 Crim. L. Mag. 225.

ROUTE, (in charter of railroad company). 36 Wis. 466.

ROUTE, ALONG ITS, (construed). 1 Otto (U. S.) 454.

ROY.—A king; the king.

Roy est l'original de tous franchises (Keilw. 138): The king is the original of all franchises.

Roy n'est lie per ascun statute si il ne soit expressment nosme (Jenk. Cent. 307): The king is not bound by any statute, unless expressly named.

Roy poet dispenser ove malum prohibitum, mais non malum per se (Jenk. Cent. 307): The king can grant a dispensation for a *malum prohibitum*, but not for a *malum per se*.

ROYAL ASSENT.—The royal assent is the last form through which a bill goes previously to becoming an act of parliament; it is, in the words of Lord Hale, "the complement and perfection of a law." The royal assent is given either by the queen in person, or by royal commission by the queen herself signed with her own hand. It is rarely given in person, except when at the end of the session the queen attends to prorogue parliament, if she should do so. See LE ROY LE VEUT; VETO.

ROYAL BURGHS in Scotland are incorporated by royal charter, giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. A burgh is called a "royal burgh" if it hold of the crown; if it hold of a subject it is termed a "burgh of barony." See 3 and 4 Will. IV. c. 46; *Id.* c. 77, explained by 4 and 5 *Id.* c. 87.

ROYAL COURTS OF JUSTICE.—Under the Stat. 42 & 43 Vict. c. 78, § 28, this is the name given to the buildings, together with all additions thereto, erected under the Courts of Justice Building Act, 1863, (28 and 29 Vict. c. 48,) and Courts of Justice Concentration (Site) Act, 1865, (28 and 29 Vict. c. 49).—*Brown*.

ROYAL FISH are whale and sturgeon, and these, when either thrown ashore or caught near the English coast, are the property of the king. 1 Bl. Com. 290. See PREROGATIVE, § 2.

ROYAL GRANTS.—Conveyances of record, in England. They are of two kinds: (1) Letters-patent, and (2) letters-close, or writs-close. 1 Steph. Com. (7 edit.) 615-618.

ROYAL MINES.—Those mines which are properly royal, and which the king is entitled to when found, are mines of gold and silver, and no other mines. Bainb. Mines, by Brown (4 edit.) See MINERALS, § 2.

ROYAL PREROGATIVE.—See PREROGATIVE.

ROYALTIES.—Regalities; royal property.

ROYALTY.—

§ 1. A payment reserved by the grantor of a patent, lease of a mine, or similar right, and payable proportionately to the use made of the right by the grantee. It is usually a payment of money, but may be a payment in kind, *i. e.* of part of the produce of the exercise of the right. Van Mining Co. v. Overseers of Llanidloes, 1 Ex. D. 310. See RENT, § 6.

§ 2. Royalty, also, sometimes means a payment which is made to an author or composer by an assignee or licensee in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent.

RUBRIC.—Directions printed in books of law and in prayer books, so termed because they were originally distinguished by red ink.

RUBRIC OF A STATUTE.—Its title, which was anciently printed in red letters. It serves to show the object of the legislature, and thence affords the means of interpreting the body of the act. Hence the phrase of an argument, *à rubro ad nigrum*.

RUBRICAS.—Constitutions of the church founded upon the Statutes of Uniformity and Public Prayer, viz., 5 and 6 Edw. VI. c. 1; 1 Eliz. c. 2; 13 and 14 Car. II. c. 4.

RULE.—

§ 1. A rule is a regulation made by a court of justice or public office with reference to the conduct of business therein. Most rules are made under the authority of a statute, and then have the same effect as an enactment of the legislature; such are the supplemental rules of court made by the English judges under the Judicature Acts, and the rules issued under the Land Transfer Act. See LAND REGISTRIES, § 5.

§ 2. "Rule" also signifies an order or

direction made by a court of justice in an action or other proceeding. The term is confined to the practice of the common law courts, the word "order" having taken its place in the modern English practice (except in the Queen's Bench Division), and in that of the States having adopted Codes of Procedure.

§ 3. **Absolute, to show cause.**—A rule is either (1) absolute in the first instance, or (2) calling upon the opposite party to show cause why the rule applied for should not be granted; a rule of the latter kind is called a "rule to show cause," or a "rule nisi," because if no sufficient cause is shown, the rule is made absolute; otherwise it is discharged. On a motion for a new trial, the rule is in the first instance a rule nisi only. In certain cases, to save time, the party against whom the rule is applied for agrees, with the permission of the court, to "show cause in the first instance," *i. e.* to argue against the granting of a rule absolute when the application is first made, instead of compelling the opposite party to obtain a rule nisi, and then showing cause or arguing against it. Arch. Pr. 1254 *et seq.* See ABSOLUTE; NISI; ORDER, § 3.

§ 4. Rules of the kind above described are obtained on motion by counsel (*see* MOTION); but there are some cases in which rules are obtained without any motion. Thus, a rule to make a submission to arbitration a rule of court is granted upon the mere production of a motion paper signed by counsel. Other rules may be obtained without the assistance of counsel, generally by leaving at the proper office a *proceipe* or memorandum of the rule required. Formerly many rules of this kind were moved for by the attorneys at the side bar in court, and were hence called "side-bar rules." A rule that a sheriff return a writ, is an example of a side-bar rule. There are also certain rules which are obtained upon a judge's fiat. Arch. Pr. 534, 1268; Angell v. Baddeley, 3 Ex. D. 49.

§ 5. **Rule of law.**—"Rule" sometimes means a rule of law. Thus, we speak of the rule against perpetuities, the rule in Shelley's Case, &c. See LAW; PERPETUITY.

RULE IN SHELLEY'S CASE.—See SHELLEY'S CASE.

RULE NISI.—See RULE, § 3.

RULE OF COURT.—Generally means a rule of procedure. (*See* RULE, § 1.) Sometimes, however, it means an order made by a court in a particular action or matter. Thus, a submission to arbitration may provide that it may be made a rule of court, and if so either party may obtain an order of the court to that effect, the operation of which is that the award becomes enforceable by judicial means. See AWARD, § 4; RULE, § 2.

RULE OF COURT, (what constitutes legal notice of). 1 Gr. (N. J.) 245.

RULE OF LAW.—See **RULE**, § 5.

RULE OF THE ROAD.—The popular English name for the regulations governing the navigation of vessels in public waters, with a view to preventing collisions. The regulations applying to the high seas are contained in an order in council of the 14th of August, 1879, made under the 25th section of the Merchant Shipping Act, 1862. (They are set out in Couls. & F. Waters 403, and are printed in the Law Reports, 4 P. D. 241.) Additional regulations were made on the 24th of March, 1880, 17th of September, 1880, and 14th of December, 1880. (5 P. D. 269 *et seq.*) The regulations applying to the Thames are contained in the by-laws made by the Thames Conservancy on the 5th of February, 1872, 25th of November, 1874, 17th of March, 1875, 11th of July, 1877, 11th of November, 1879, and 18th of March, 1880. Couls. & F. Waters 673.

RULE, TO.—Is commonly used in two senses: (1) For commanding or requiring by a rule or order of court, as to rule a sheriff to return a writ, &c.; (2) for laying down, or deciding, or settling a point of law.

RULES OF THE KING'S BENCH PRISON.—Certain limits without the walls, within which all prisoners in custody in civil actions were allowed to live, upon giving security by bond with two sufficient sureties to the marshal not to escape, and paying him a certain percentage on the amount of the debts for which they were detained.

RUMOR.—Common rumor is not admissible in evidence for any purpose; nor does such rumor affect a purchaser or mortgagee with notice. But a common rumor may suggest inquiry, and in that way lead to notice or to the discovery of evidence properly so called. Also, when the conduct of a person is in question, he may be asked whether a certain rumor had reached his ears at a particular time, because in such a case the rumor so reaching him or not might be part of the *res gestæ*.—*Brown*.

RUN.—To take effect in point of place, as of a writ running in given localities; or in point of time, as of the running of the Statute of Limitations.

RUN, (equivalent to "pass" or "spread"). 30 Conn. 304, 307.

RUN WITH THE LAND, (what covenants do). 10 East 138.

RUNCARIA.—Land full of brambles and briars. 1 Inst. 5a.

RUNCILUS—RUNCINUS.—A load-horse, stumpter-horse, cart-horse.—*Cowell*.

RUNDLET, or RUNLET.—A measure of wine, oil, &c., containing eighteen gallons and a half. (1 E. III. c. 13).—*Cowell*.

RUNNING ACCOUNT.—An open account. See **ACCOUNT**, § 5.

RUNNING ACCOUNT, (defined). 1 Ind. 333.
—— (what is). Coxe (N. J.) 196; 2 Mod. 312.

—— (what is not). 3 Pick. (Mass.) 96.
—— (will not sustain a suit for each separate delivery). 13 Wend. (N. Y.) 646.

RUNNING AT LARGE, (defined). 26 Minn. 154.
—— (in a statute). 53 Iowa 632; 21 Hun (N. Y.) 246; 50 Vt. 130; 23 Alb. L. J. 504, and cases cited.

RUNNING DAYS.—Where a charter-party contains a clause of demurrage, it may be a question whether the days allowed by it (lay days) are meant to be working days, *i. e.* excluding Sundays, or running days, *i. e.* including Sundays. By the custom of London, lay days are taken to mean working days, while, in the absence of custom, they mean running days. Sm. Merc. Law 298; Brown v. Johnson, 10 Mees. & W. 331. See **DEMURRAGE**; **LAY DAYS**.

RUNNING DAYS, (in a statute). 16 Gray (Mass.) 471.

RUNNING TO THE SHORE, (in a deed). 6 Mass. 437.

RUNNING WITH THE LAND.—A covenant is said to run with the land when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. Thus, if A. grants B. a lease of the land for twenty-one years, and the lease contains, amongst other covenants, a covenant on the part of A. for the quiet enjoyment of the land by B. during the term, and also a covenant on the part of B. to cultivate the land demised in a particular manner, and B. afterwards assigns the land to C. for the residue of the term, in this case the liability to perform the covenant made by B. and the right to take advantage of the covenant made by A. would devolve upon C. as assignee of the land to which the covenants related, and, in so doing, they

would be said to "run with the land." (Noke v. Awder, Cro. Eliz. 436; Cockson v. Cock, Cro. Jac. 125.) In Spencer's Case, otherwise Spencer v. Clark, 5 Co. 16, decided in the twenty-fifth year of the reign of Elizabeth, it was resolved what covenants were personal and what real, so as to run or not with the land (or with the reversion); and the reasons for such resolution are given in the case of Baily v. Wells, reported in Wilm. 344. See COVENANT, § 5.

RUNNING WITH THE LAND, (covenants). 4 Paige (N. Y.) 514, 578; 17 Wend. (N. Y.) 187; Penn. (N. J.) 410.

RUNNING WITH THE REVERSION.—A covenant is said to "run with the reversion" when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion. Thus, if A. grants a lease of land to B. for twenty-one years, and the lease, among other covenants, contains a covenant on the part of A. for the quiet enjoyment of the land by B. during the term, and also a covenant on the part of B. to cultivate the land demised in a particular manner, and A. afterwards assigns the reversion in the land to C., in this case the liability to perform the covenant made by A., and the right to take advantage of the covenant made by B., would devolve upon C., as assignee of the reversion in the land to which the covenants related; and, in so doing, they would be said to "run with the reversion." (Noke v. Awder, Cro. Eliz. 436; Campbell v. Lewis, 3 Barn. & Ald. 302; Middlemore v. Goodall, Cro. Cur. 503; Cockson v. Cock, Cro. Jac. 125.) In Spencer's Case, otherwise called Spencer v. Clark (5 Co. 16), 25 Eliz., as explained in Baily v. Wells (Wilm. 344), the principle of covenants running or not with the re-

version (or with the land) is expounded. See COVENANT, § 5.

RUNRIG LANDS.—Lands in Scotland where the ridges of a field belong alternately to different proprietors. Anciently this kind of possession was advantageous in giving an united interest to tenants to resist inroads. By the Act 1695, c. 23, a division of these lands was authorized with the exception of lands belonging to corporations.—*Wharton*.

RUNS, (sometimes used interchangeably with creeks). 7 Wheat. (U. S.) 162.

RUPTARII, or **RUTTARII**.—Soldiers. Mat. Par. anno 1199. See *Cowell*.

RUPTURA.—Arable land, or ground broke up.—*Cowell*.

RURAL DEANERY.—See **RURAL DEANS**.

RURAL DEANS are very ancient officers of the English church, but their authority is almost grown out of use. (1 Bl. Com. 383.) A rural deanery is a subdivision of an archdeaconry. The duties of a rural dean seem to consist in executing all processes (or writs) directed to him by the bishop, in inspecting and reporting to the bishop on the lives and manners of the clergy and people within his district (Phillim. Ecc. L. 251 *et seq.*), and in examining candidates for confirmation. 2 Steph. Com. 679. See **DEAN**.

RUSE DE GUERRE.—A trick in war; a stratagem.

RUSTICI.—Churls; downys; or inferior country tenants, who held cottages and lands by the services of ploughing, and other labors of agriculture, for the lord. The land of such ignoble tenure was called by the Saxons *gafulland*, as afterwards "socage tenure," and was sometimes distinguished by the name of *terra rusticorum*.—*Par. Antig.* 136.

ruta.—In the civil law, things extracted from land, as sand, chalk, coal, and such other matters.

ruta cæsa.—In Roman law, were things dug up (*ruta*) and things cut down (*cæsa*), out of or upon land; and unless they were expressly included, they were not deemed to pass with the land sold (D. 19, 1, 17, 6).—*Brown*.

S.

S. P.—(1) An abbreviation of *sine prole*, without issue. (2) An abbreviation of "same principle," or "same point," indicating, when inserted between two citations of cases, that the second one involves the same doctrine as the first.

SABBATH.—One of the names of the first day of the week, more properly called "Sunday" (q. v.)

SABBATH BREAKING.—An offense against religion and good morals.

It is punished by statute in the several States.

SABBATH BREAKING, (what constitutes). 36 Ark. 222; 76 Ind. 310; 13 Lan. Bar 102; 38 Leg. Int. 479; 12 Rep. 700.

— (in a statute). 45 Md. 432.
SABBATH NIGHT, (defined). 78 Ill. 294.

SABBATUM.—The Sabbath; also, peace.—*Domesd.*

SABBULONARIUM.—(1) A gravel pit, or liberty to dig gravel and sand; (2) money paid for the same.—*Cowell.*

SABLE.—The heraldic term for black. It is called "Saturn," by those who blazon by planets, and "diamond," by those who use the names of jewels. Engravers commonly represent it by numerous perpendicular and horizontal lines, crossing each other.—*Wharton.*

SAC.—The privilege enjoyed by a lord of a manor, of holding courts, trying causes and imposing fines.—*Cowell.*

SACA.—Cause; sake.

SACABURTH, SACABERE, or SAKABERE.—He that is robbed, or by theft deprived of his money or goods, and puts in surety to prosecute the felon with fresh suits.—*Bract*. l. 3, c. 32. The Scots term it *sikerborgh* (*i. e. securum plegium*).—*Spel. Gloss.*

SACCULARII.—In the Roman law, cut-purses. 4 Steph. Com. (7 edit.) 125.

SACCUS CUM BROCHIA.—A service or tenure of finding a sack and a broach (pitcher) to the sovereign for the use of the army. *Bract*. l. 2, c. xvi.

SACQUIER.—An ancient officer, whose business was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, cheating him of his merchandise.—*Wharton.*

SACRAMENT, REVILING THE.—An indecent and arrogant crime against religion, punished by fine and imprisonment. 1 Edw. VI. c. 1; 1 Eliz. c. 1; *Jd.* c. 2; 9 and 10 Will. III. c. 32; 4 Steph. Com. (7 edit.) 208.

SACRAMENTI ACTIO.—In the Roman law the general *legis actio*, to which resort might always be had, failing a right to use any of the four other or shorter forms of the *legis actiones*.

SACRAMENTUM.—An oath; money deposited to await the determination of a suit; an action or suit.

SACRAMENTUM DECISIONIS.—In the civil law, the decisive oath. Where one of the parties to a suit was unable to prove his case, he might offer to refer the decision of the cause to the oath of his adversary, who was bound to accept, or allow his opponent to take

the decisive oath, or else the matter stood as confessed. 3 Bl. Com. 342.

SACRAMENTUM SI FATUUM FUERIT, LICET FALSUM, TAMEN NON COMMITTIT PERJURIUM (2 Inst. 167): A foolish oath, though false, makes not perjury.

SACRILEGE.—In English law, a person who breaks into a place of divine worship and commits any felony therein, or who being in a place of divine worship commits any felony therein and breaks out of it, is liable to imprisonment for two years or penal servitude for life (maximum). (Stat. 24 and 25 Vict. c. 96, § 50; 2 Russ. Cr. & M. 55.) And any person who unlawfully pulls down, defaces or breaks any altar, crucifix or cross in any church, chapel or churchyard is liable, on summary conviction, to imprisonment for three months, or until he repents. Stat. 1 Mary (sess. 2) c. 3; 4 Russ. Cr. & M. 399. See, also, ARSON.

Sacrilegus omnium prædonum cupiditatem et scelera superat (4 Co. 106). A sacrilegious person transcends the cupidity and wickedness of all other robbers.

SACRISTAN.—A sexton, anciently called *sagerson*, or *sagiston*; the keeper of things belonging to divine worship.

SADBERGE.—A denomination of part of the county palatine of Durham.—*Camd. Brit.*

SÆMEND.—An umpire, or arbitrator.—*Anc. Inst. Eng.*

Sæpe viatorem nova, non vetus, orbita fallit (4 Inst. 34): A new road, not an old one, often deceives the traveler.

Sæpenumero ubi proprietas verborum attenditur sensus veritatis amittitur (7 Co. 27): Many a time where the literal meaning of words is attended to, the true meaning is lost.

SÆVITIA.—Cruelty, especially as a ground for divorce. See CRUELTY, §§ 1, 2.

SAFE AND CONVENIENT, (towns are bound to keep their highways). 37 Me. 250.
— (in statute of roads). 33 Me. 460.

SAFE-CONDUCT.—(1) Convoy; guard through an enemy's country. (2) A document allowing such a journey. It is a prerogative of the sovereign to grant safe-conducts.

SAFE-CONDUCT, (defined). 1 Kent Com. 105.

SAFEGUARD.—A protection of the crown to one who is a stranger, that fears violence from some of its subjects, for seeking his right by course of law.—*Reg. Orig.* 20.

SAFELY AND SECURELY, (an undertaking to carry goods). 2 Ld. Raym. 909, 911.

SAFELY, TO KEEP, (goods delivered). Willes 118.

SAFE-PLEDGE.—A surety appointed for one's appearance at a day assigned.—*Bract*. l. 4.

SAFETY, (defined). 6 Wheel. Am. C. L. 141.

SAFETY, MOORED IN, (in an insurance policy). 6 Mass. 314.

SAGAMAN.—A tale-teller; a secret accuser.

SAGIBARO—SACHBARO.—A judge.—*Leg. Inq.* c. vi.

SAID.—Before mentioned. This word is constantly used in contracts, pleadings and other legal papers, with the same force as "aforesaid."

SAID, (is a word of reference). 1 Bing. 314.

—(not equivalent to "saith"). 3 Dowl.

P. C. 455; 5 Tyrw. 391.

—(when may be rejected as surplusage).

8 Dowl. & Ry. 72.

—(in an affidavit). 1 Gale 47.

—(in an entry of land). 1 A. K. Marsh.

(Ky.) 417.

—(in an indictment). 10 Ind. 372.

—(in pleading). 3 Bouv. Inst. 279; 2

Ld. Raym. 1178.

—(in a will). 5 Paige (N. Y.) 184.

SAID INDENTURE, (profert made of). 3 Barn. & Ad. 396.

SAID MORTGAGE DEED, THE REAL ESTATE THEREBY CONVEYED, (in a deed). 102 Mass. 327, 328.

SAID OFFENSE, (conviction for). 1 T. R. 249.

SAID PARTIES, (in a pleading). 14 Pick. (Mass.) 165.

SAIL ON OR BEFORE, (ship warranted to). 2 Campb. 247.

SAILED, (in a policy of insurance). Cowp. 601.

SAILING, (equivalent to "departure"). 5 Tyrw. 498, 501.

SAILING INSTRUCTIONS.

—Written or printed directions, delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed for the fleet in case of dispersion by storm, by an enemy or otherwise. Without sailing instructions no vessel can have the protection and benefit of convoy. (Marsh. Ins. 368.)—*Wharton*.

SAILING OF A SHIP, (what is). 3 Barn. & C. 495.

—(what is not). 3 Barn. & Ad. 514; 5 Id. 1011; 3 Mau. & Sel. 481; 1 Moo. & M. 309.

SAILING ON A VOYAGE, (in insurance policy). 20 Pick. (Mass.) 275.

SAILORS.—See SEAMEN.

SAINT MARTIN LE GRAND, COURT OF.—A writ of error formerly lay from the sheriff's courts in the city of London to the court of hustings, before the mayor, recorder, and sheriffs; and thence to justices appointed by the royal commission, who used to sit in the church of St. Martin le Grand; and from the judgment of those justices a writ of error lay immediately to the House of Lords.—*F. N. B.* 32.

SAINT SIMONISM.—An elaborate form of non-communitistic socialism. It is a scheme which does not contemplate an equal, but an unequal division of the produce; it does not propose that all should be occupied alike, but differently, according to their vocation or capacity; the function of each being assigned, like grades in a regiment, by the choice of the directing authority, and the remuneration being by salary, proportioned to the importance, in the eyes of that authority, of the function itself, and the merits of the person who fulfills it. 1 Mill Pol. Ec. 258.

SAISIE-ARRET.—In the French law, an attachment of property in the possession of a third person.

SALADINE TENTH.—A tax imposed in England and France, in 1188, by Pope Innocent III., to raise a fund for the crusade undertaken by Richard I. of England, and Philip Augustus of France, against Saladin, Sultan of Egypt, then going to besiege Jerusalem. By this tax every person who did not enter himself a crusader was obliged to pay a tenth of his yearly revenue and of the value of all his movables, except his wearing apparel, books and arms. The Carthusians, Bernardines, and some other religious persons, were exempt. Gibbon remarks, that when the necessity for this tax no longer existed, the church still clung to it as too lucrative to be abandoned, and thus arose the tithing of ecclesiastical benefices for the pope or other sovereigns.—*Encycl. Lond.*

SALARIED OFFICER, (cannot claim extra compensation for performing a new duty). 1 Hill (N. Y.) 362.

SALARY.—A recompense or consideration made to a person for his pains and industry in another person's business; also wages, stipend, or annual allowance.—*Cowell*.

The ancients derive the word from *sal*, salt (*Plin. H. N.* xxxi. 42); the most necessary thing to support human life being thus mentioned as a representative of all others, and the word, if thus derived, bears a most striking resemblance in its origin to *pin-money* (q. v.) *Salarium*, therefore, comprised all the provisions with which the Roman officers were supplied, as well

as their pay in money. In the time of the republic, the name *salarium* does not appear to have been used; it was Augustus who, in order to place the governors of provinces and other military officers in a greater state of dependence, gave salaries to them, or certain sums of money, to which afterwards various supplies in land were added.—*Smith Dict. Antiq.*

SALARY, (defined). 54 Ala. 47; 10 Ind. 83.

SALE.—

§ 1. A sale is a transmutation of property or of a right from one man to another, in consideration of a sum of money, as opposed to barter, exchanges and gifts (*q. v.*) (Chit. Cont. 346; Sm. Merc. Law 479; Benj. Sales 2.) Almost any right may be transferred for a price, but the term "sale" is only applied to cases where the whole right of the vendor is transferred, not to cases where he creates a new or limited right in consideration of a money payment: thus a mortgage or lease is not a sale.

§ 2. Every sale includes (1) the agreement ("agreement" is here used in its simplest sense, as denoting the common intention of two persons, not in the sense of "contract," see AGREEMENT, § 1,) or bargain; (2) the payment of the price, and (3) the delivery or conveyance of the property. Sometimes the three transactions take place simultaneously, as where I go into a shop, select an article, pay the price and take it away, and then the transaction is a simple sale. But either the payment of the price, or the delivery (or conveyance) of the property, or both, may be postponed to a future time, giving rise to a contract or agreement to do something *in futuro*. (Benj. Sales 3.) When the vendor brings an action for the price of goods which have been delivered, his claim is for "goods sold and delivered;" if the goods have not been delivered his claim is for "goods bargained and sold."

§ 3. Bargain and sale.—In the case of chattels, such a postponement does not prevent the property or ownership from passing from the vendor to the vendee, provided that the thing sold is existent and ascertained, and that the contract of sale fulfills the legal requisites (see STATUTE OF FRAUDS), and therefore the "sale" is

complete as soon as the contract has been entered into; such a transaction is called a "bargain and sale" (*q. v.*), or an "executed contract of sale" (Benj. Sales 3), although the contract has not been performed.

§ 4. Executory sale.—But in the case of an agreement for the sale of land or of unascertained goods (*e. g.* ten sheep to be selected from a given flock), the ownership does not pass, and, therefore, the sale is not complete until the land has been conveyed, or the goods ascertained; such a transaction is an executory contract of sale. Wms Pers. Prop. 44; Benj. Sales 3, 227. See APPROPRIATION, § 2.

§ 5. Sale by non-owner.—Ordinarily the person who sells is the owner of the property or his agent, but in some cases a person may sell property which does not belong to him, *e. g.* a sheriff who has taken goods in execution. So a person may have a power of sale over property without having the ownership in it, as in the case of an ordinary mortgagee of land or a pledgee of chattels. (See MORTGAGE, § 8; POWER, §§ 5, 6.) So when a person has a charge on property, he may take proceedings in the proper court to have it sold in satisfaction of the debt. This is sometimes called a "judicial sale." See HYPOTHECACTION, § 2.

§ 6. Compulsory sale.—Again, a sale is usually a voluntary act, but in some cases the owner of property may be compelled to sell it by the order of a court. Thus, in an action for partition the court may order a sale instead of a partition if the nature of the property makes that course preferable, and then even the non-assenting co-owners are ordered to join in the conveyance, or the conveyance is effected without their concurrence. (Dart Vend. 1190 *et seq.* See VESTING ORDER.) Railway and other companies are frequently empowered to purchase land, &c., from the owners against their will. See POWER, § 2. See, also, BILL OF SALE; CONTRACT, § 14; RE-SALE; VENDORS AND PURCHASERS; WARRANT.

SALE, (defined). 58 Ala. 165; 64 Ill. 258; 1 Ind. 69; 12 Allen (Mass.) 48; 11 Abb. (N. Y.) Pr. N. s. 132; 14 N. Y. 117; 71 N. C. 451; 2 Kent Com. 625; 2 Bl. Com. 446; Long Sales 1, ——— (what is). Cox (N. J.) 261; 6 Paige (N. Y.) 480; 4 East 615.

SALE, (what is not). 5 Pet. (U. S.) 347; 21 Wend. (N. Y.) 493; 1 Rand. (Va.) 3.
 ——— (distinguished from discount of note).
 2 Harr. (N. J.) 209.
 ——— (distinguished from pledge). 6 East 17, 41.
 ——— (distinguished from a contract for sale).
 4 East 394.
 ——— (distinguished from a conveyance). 3 Mass. 501.
 ——— (of chattel). 13 Vr. (N. J.) 424.
 ——— (of note, what is). 7 Pet. (U. S.) 103.
 ——— (who may question validity of). 7 Mass. 488.
 ——— (when will be opened). 2 Ves. 54.
 ——— (sheriff's right of discretion in). 7 Halst. (N. J.) 307, 308.
 ——— (by trustee to himself is void). 2 Halst. (N. J.) 175.
 ——— (in a policy of insurance). 1 Abb. (N. Y.) Pr. N. s. 349.
 ——— (in a statute). 30 Ala. 591; 20 Kan. 243, 245; 48 N. Y. 17.
 ——— (of intoxicating liquors includes the giving away). 48 Ind. 306.
SALE, ABSOLUTE, (what is not). 9 Pick. (Mass.) 442.
SALE, ALIENATION OR TRANSFER, (in an insurance policy). 1 Robt. (N. Y.) 55.
SALE, AUCTION, (what is not). 28 Ohio St. 479.
SALE BY SAMPLE, (what is). 8 Pick. (Mass.) 250; 5 Johns. (N. Y.) 404; 12 Wend. (N. Y.) 413, 566; 13 Id. 425.
 ——— (what is not). 9 Wheat. (U. S.) 645; 19 Wend. (N. Y.) 159.
 ——— (what is, a question for the jury). 3 Rawle (Pa.) 32.
 ——— (effect of). 13 Mass. 139.
SALE, CONTRACT OF, (defined). 2 Kent Com. 468.
SALE, FRAUDULENT, (in penal law). 45 Cal. 342; 5 Heisk. (Tenn.) 555.

SALE NOTES.—See **BOUGHT AND SOLD NOTES**.

SALE OF LAND.—This may take place either by public auction or by private contract, and in either case is according to certain previously agreed upon conditions of sale. A deposit is usually paid, but unless by the express agreement of the parties no deposit is necessary to complete the bargain as a binding contract. In due course, an abstract of title is delivered by the vendor to the purchaser, or prepared at the instance of the latter, who examines and satisfies himself regarding the title, its sufficiency or insufficiency. In case the title is insufficient or bad, and cannot be perfected or cured, the contract is usually off, and the deposit money is returned, the purchaser being generally entitled to moderate damages in addition; but other-

wise the contract proceeds, and is finally completed by payment or securing of the residue of the purchase money and obtaining a legal conveyance of the land, free from incumbrances, and by delivery over of the title deeds to the purchaser.

SALE OF LAND, (a mortgage is not). 45 Cal. 342, 344.
 ——— (implies a conveyance). 1 Ind. 69.

SALE ON APPROVAL.—This phrase and the corresponding phrases, "sale on trial" and "sale or return," denote a sale dependent upon a condition precedent, viz., the condition of the purchaser being satisfied with or approving the goods. The approval may be implied from keeping the goods beyond a reasonable time. Benj. Sales 488.

SALE OR RETURN, UPON, (in an agreement to supply goods). 2 Campb. 83.

SALE, POWER OF, (in a will). 1 Jac. & W. 189.

——— (not executed by partition). 11 Ves. 467.

SALABLE UNDERWOODS, (construed). 10 East 219, 224, 446.

——— (when ratable under poor laws). L. R. 2 Q. B. 135.

SALES, (what may be made in market overt). 1 Tyler (Vt.) 341.

SALET.—In old English law, a head-piece; a steel cap or morion.—*Cowell*.

SALFORD HUNDRED COURT OF RECORD.—An inferior and local court of record having jurisdiction in personal actions where the debt or damage sought to be recovered does not exceed £50, if the cause of action arise within the Hundred of Salford. Stat. 31 and 32 Vict. c. 130; *Oram v. Breary*, 2 Ex. D. 346. See **HUNDRED**.

SALIC, or SALIQUE LAW.—An ancient and fundamental law of the kingdom of France, usually supposed to have been made by Pharamond, or at least by Clovis, in virtue of which males only are to reign.

Some, as Postellus, will have it to have been called "*Salic, q. d. Gallic*," because peculiar to the Gauls. Cenal takes the reason to be, that the law was only ordained for the royal *salles* or palaces. Fer. Montanus insists it was because Pharamond was at first called "*Salicus*;" others, with the Abbot of Uspereg, derive its name from Salogast, Pharamond's principal minister; and others from the frequent repetitions of the words *si aliqua*, at the beginning of the articles. The most probable opinion is that which derives the word from the ancient Franks, who were called "*Salii*," "*Salicci*," and "*Salinge*," on account of the Sala, a river of ancient Germany. Bouterone gives another plausible origin to the word; he says it comes from the word *salich*, which, in the

old Teutonic language, signified salutary; and that the French in this law imitated the policy of the ancient Romans, who made salutary laws, which the magistrates were to have before them when they administered justice. This he confirms by a curious figure taken out of the *Notitia Imperii*, where the book is represented covered with gold, with the inscription, *leges salutarie*.

It is a popular error to suppose that the Salic law was established purely on account of the succession of the crown, since it extends to private persons as much as to the royal family.

The Salic law had not in view a preference of one sex to the other, much less had it a regard to the perpetuity of a family, a name, or the succession of land. It was purely a law of economy which gave the house, and the land dependent on the house, to the males who should dwell in it, and to whom it consequently was of more service.

In proof of this, the title of allodial lands of the Salic law may be thus stated:

(1) If a man die without issue, his father or mother shall succeed him.

(2) If he have neither father nor mother, his brother or sister.

(3) If he have neither brother nor sister, the sister of his mother.

(4) If his mother have no sister, the sister of his father.

(5) If his father have no sister, the nearest relation by the male.

(6) No part of the Salic land shall pass to the females, but it shall belong to the males; the male children shall succeed their father. (*Encycl. Lond.*; Hallam *Med. Ages* c. ii., p. 278, n. (3).) — *Wharton*.

SALOON, (defined). 26 Mich. 325.

— (what is not). 36 Tex. 364.

SALT LICK, (synonymous with "salt spring"). 8 McLean (U. S.) 151, 154.

SALT MARSH LAND, (what is). 26 Cal. 336.

SALT MARSH LANDS, (in a statute). 32 Cal. 354.

SALT-SILVER.—One penny paid at the feast day of St. Martin, by the tenants of some manors, as a commutation for the service of carrying their lord's salt from market to his larder. — *Par. Antiq.* 496.

SALT WORKS, (devise of). 6 Munf. (Va.) 134.

SALTUS.—A glade.

SALUS.—Health; prosperity; safety.

Salus populi est suprema lex (11 Co. 139): The safety of the people is the supreme law.

SALUS POPULI EST SUPREMA LEX, (applied). 38 Me. 379, 412; 17 Wend. (N. Y.) 292.

Salus reipublicæ suprema lex: The safety of the state is the supreme law.

Salus ubi multi consiliiarii (4 Inst. 1): Where there are many counselors, there is safety.

SALUTE.—A coin made by Henry V., after his conquests in France, whereon the arms of England and France were stamped and quartered. — *Stow Chron.* 589.

SALVA GARDIA.—Safe-guard (*q. v.*) See **DE SALVA GARDIA**.

SALVAGE—SALVORS.—

§ 1. Salvage is the compensation allowed to persons (salvors) by whose assistance a ship, or boat, or the cargo of a ship, (or, in English maritime law, the lives of the persons belonging to her,) are saved from danger or loss, in cases of shipwreck, dereliction, capture, or the like. The assistance must be voluntary, and not under any contract or duty, and must involve skill, enterprise and risk on the part of the salvors. (*Maud. & P. Mer. Sh.* 477; *Sm. Merc. Law* 331; *Eng. Merch. Shipp. Act*, 1854, pt. viii.; *The Cleopatra*, 3 P. D. 145.) Salvors have a retaining lien for their remuneration on the property rescued. (*Maud. & P. Mer. Sh.* 487. See **LIEN**, §§ 4, 6.) In the absence of an agreement between the salvors and the owners of the property salvaged, the court will assess the amount which ought to be paid to the salvors. In doing so the court will have regard to the skill, enterprise and risk involved, and to the fact that if their efforts had been unsuccessful, they would not have been paid anything. (*Aitchison v. Lohre*, 4 App. Cas. 755.) The court will refuse to enforce an exorbitant salvage agreement. *The Silesia*, 5 P. D. 177. See **TOWAGE**.

§ 2. Claims for salvage are usually enforced in courts having admiralty jurisdiction. *Wms. & B. Adm.* 91 *et seq.* See **ACTION**, § 12; **ADMIRALTY**, § 2.

§ 3. **Equitable salvage**.—By analogy, the term "salvage" is sometimes also used in cases which have nothing to do with maritime perils, but in which property has been preserved from loss by the last of several advances by different persons. In such a case, the person making the last advance is frequently entitled to priority over the others, on the ground that, without his advance, the property would have been lost altogether. This right, which is sometimes called that of equitable salvage, and is in the nature of a lien, is chiefly of importance with reference to payments made to prevent leases or policies of insur-

ance from being forfeited, or to prevent mines and similar undertakings from being stopped or injured. See 1 Fish. Mort. 149; 2 *Id.* 620; *Ex parte* Grissell, 3 Ch. D. 411; *Shearman v. British Empire Ins. Co.*, L. R. 14 Eq. 4; *Saunders v. Dunman*, 7 Ch. D. 825.

SALVAGE, (defined). 1 Cranch (U. S.) 28; 2 Paine (U. S.) 466; 2 Pet. (U. S.) Adm. 424, 425; 7 East 34, 35; 3 W. Rob. 138; 3 Kent Com. 245.

—— (what constitutes). 1 Cliff. (U. S.) 210; 7 N. Y. 555, 559.

—— (when not allowed). 9 Cranch (U. S.) 367; 31 L. J., Adm. 46.

—— (who cannot claim). 23 Wall. (U. S.) 1.

SALVAGE-LOSS.—The difference between the amount of salvage, after deducting the charges, and the original value of the property.

SALVAGE SERVICE, (defined). Abb. (U. S.) Adm. 222, 223.

—— (risk of life is not necessarily). 1 Bond (U. S.) 117, 270.

SALVO.—Without prejudice to.

SALVOR.—A person who renders assistance to a ship or vessel in distress, whereby he becomes entitled to a reward. See **SALVAGE**.

SALVOR, (defined). 1 Low. (U. S.) 23; 1 Newb. (U. S.) Adm. 329; 2 Paine (U. S.) 131.

SALVUS PLEGIUS.—A safe pledge; called, also, "*certus plegius*," a sure pledge. Bract. 160 b.

SAME, (defined). 40 Iowa 487, 493.

—— (not synonymous with "aforesaid"). 3 Wils. 340; 1 Chit. Crim. L. 173.

—— (in a contract). 66 Ill. 99.

—— (in a deed). 8 Mass. 175.

—— (in a will). 14 Pick. (Mass.) 70.

SAME CAUSE, (defined). 2 Mass. 356.

—— (in a statute). 1 C. P. D. 97.

SAME CAUSE OF ACTION, (means an action supported by the same evidence). 2 Hall (N. Y.) 454.

SAME DESCRIPTION, (in railway clauses act). L. R. 4 H. L. 226.

SAME OFFENSE, (in United States constitution). 1 Hughes (U. S.) 552.

SAME, OR THE GREATER PART OF, (in a charter). 3 Dowl. & Ry. 75, 82.

SAME VOYAGE OUT AND HOME, (in a statute). 11 East 683.

SAMPLE.—A small quantity of a commodity exhibited at public or private sales as a specimen. Where goods are warehoused, certain small specified quanti-

ties are, by the regulations at the custom house, allowed to be taken out as samples, without payment of duty.

SAMPLE, SALE BY.—A sale, at which only a sample of the goods sold is exhibited to the buyer. In such a sale there is an implied warranty that the bulk of the property corresponds, as to quality, with the sample shown.

SANCTA.—Reliques of saints, upon which oaths were made.

SANCTION.—In the original sense of the word, a sanction is a penalty or punishment provided as a means of enforcing obedience to a law: (2 Just. Inst. 1, 10.) In jurisprudence, a law is said to have a sanction when there is a State which will intervene if it is disobeyed or disregarded. (Holl. Jur. 60.) Therefore, international law has no legal sanction.

SANCTIONS, VARIETIES OF.—Sanctions have been described as civil (*i. e.* private) and as criminal (*i. e.* public)—the difference between them according to Austin being that the civil sanction may be remitted or enforced at the option of the individual, but that the criminal sanction cannot be so remitted or so enforced, but that only the public (*i. e.* sovereign) may remit or at its option enforce the sanction. A criminal sanction is in fact merely a punishment; and a civil sanction is simply a right or a right of action with its consequences to the unsuccessful party. In a more general sense, a sanction has been defined as a conditional evil annexed to a law to produce obedience to that law; and in a still wider sense, a sanction means simply an authorization of anything. Occasionally, sanction is used (*e. g.* in Roman law) to denote a statute, the part (penal clause) being used to denote the whole.—*Brown*.

SANCTUARY.—In old English law, a place privileged for the safe-guard of offenders' lives, being founded on the law of mercy, and the great reverence and devotion which the prince bears to the place whereunto he grants such privilege. 3 Hallam Mid. Ages c. ix. pt. 1, p. 302.

All privilege of sanctuary, and abjuration consequent thereon, is utterly taken away and abolished. 21 Jac. I. c. 21.

SAND, (in a deed). 41 Me. 352.

SAND-GAVEL.—A payment due to the lord of the manor of Rodley, in the county of Gloucester, for liberty granted to the tenants to dig sand for their common use.—*Cowell*.

SANE MEMORY.—Sound mind, memory, and understanding. This is one of the essential elements in the capacity

of contracting; and the absence of it in lunatics and idiots, and its immaturity in infants, is the cause of their respective incapacities or partial incapacities to bind themselves. The like circumstance is their ground of exemption in cases of crime. See LUNACY; MEMORY; NON COMPOS MENTIS.

SANE OR INSANE, (in life policy). 19 Am. Rep. 628 n.

SANG, or SANC.—In old French law, blood.

SANGUINE, or MURREY.—An heraldic term for blood-color, called in the arms of princes "dragon's tail," and in those of lords "sardonyx." It is a tincture of very infrequent occurrence, and not recognized by some writers. In engraving, it is denoted by numerous lines in saltire.—*Wharton*.

SANGUINEM EMERE.—A redemption by villeins, of their blood or tenure, in order to become freemen.

SANGUIS.—The right or power which the chief lord of the fee had to judge and determine cases where blood was shed. Mon. Ang. t. i. 1021.

SANIS.—A kind of punishment among the Greeks; inflicted by binding the malefactor fast to a piece of wood.—*Encycl. Lond.*

SANITARY AUTHORITIES.—

§ 1. In the English law, bodies having jurisdiction over their respective districts in regard to sewerage, drainage, scavenging, the supply of water, the prevention of nuisances and offensive trades, &c., all of which come under the head of "sanitary matters" in the special sense of the word. Sanitary authorities also have jurisdiction in matters coming under the head of "local government" (*q. v.*) Public Health Act, 1875, *passim*.

§ 2. Urban—Rural—Port.—Urban sanitary authorities have jurisdiction in boroughs, towns, and other places having "known and defined boundaries." (See Reg. v. Northowram, L. R. 1 Q. B. 110.) Rural sanitary authorities have jurisdiction in poor law parishes and unions not being within an urban district. (Public Health Act, 1875, pt. ii.) A port sanitary authority is one having jurisdiction over a port. (*Id.* § 287 *et seq.*) London is subject to special acts called the "Metropolis Local Management Acts." (Especially Stat. 18 and 19 Vict. c. 120.) See BOARD OF HEALTH; METROPOLITAN BOARD OF WORKS; NUISANCE; RATE.

SANITY.—Sound understanding; the reverse of insanity (*q. v.*)

SANS CEO QUE.—Without this. See ABSQUE HOC.

SANS FRAIS.—Without expense. See RETOUR SANS PROTET.

SANS FRAIS, (in a bill of exchange). 1 Bouv. Inst. 461.

SANS IMPEACHEMENT DE WAST.—Without impeachment of waste. Litt. § 152. See ABSQUE IMPETITIONE VASTI.

SANS NOMBRE.—Without number. As applied to rights of common, this phrase means not a common for innumerable beasts, but for a number not certain, (*per* Babington, C. J., 11 Hen. VI. 22 B, cited Cooke Incl. 26,) the limit being fixed by some other standard than that of number.

§ 2. Common of pasture in gross *sans nombre* is a right to turn on the common so many cattle as the common will maintain beyond the cattle of the lord and those who have common appendant and appurtenant there. Elt. Comm. 79; Cooke Incl. 27.

§ 3. As applied to common of pasture appurtenant, the term "*sans nombre*" can mean no more than that the measure of the right is levancy and couchancy (*q. v.*) Elt. Comm. 193, 67.

SANS RECOURS.—Without recourse (*q. v.*)

SANS RECOURS, (indorsed on a bill of exchange). 1 Bouv. Inst. 463.

SAOI.—A tip-staff or serjeant-at-arms.

Sapientia supplet ætatem: Wisdom supplies age.

A maxim of evidence applicable to children of tender years, *e. g.* under seven or thereabouts. *Prima facie* the evidence of such children is not receivable by reason of a supposed immaturity of intellect or defectiveness in the appreciation of an oath. But upon this maxim, the child may be examined in order to ascertain the measure of its intelligence and religious feeling; and when its intelligence and sentiments are found to be sufficient, then its deficiency of years is supplied by this maxim: Intelligence and sobriety supply the defect of years. See MALITIA SUPPLET ÆTATEM; VOIR DIRE.

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum (4 Inst. 163): It is the part of a wise judge to consider that so much only is permitted to him as is committed and intrusted to him.

SARCOLATURA UNA.—A tenant's service of one year's weeding for his lord. Par. Antiq. 403.

SARDIN-TIME.—The time or season when husbandmen weed their corn.—*Cowell*.

SARKELLUS.—An unlawful net or engine for destroying fish.—*Cowell*.

SARSAPARILLA, (is not a root perishable in its nature). 7 Johns. (N. Y.) 885.

SART.—A piece of woodland turned into arable. See ASSART.

SASSONS.—The corruption of Saxons. A name of contempt formerly given to the English, while they affected to be called Angles; they are still so called by the Welsh.

SATISDARE.—In the civil law, to guarantee the obligation of a principal.

SATISDATIO.—In Roman law, was the security (consisting in money or in some other form) given by certain persons in certain legal proceedings, whether actions or not; usually, a trustee or tutor, unless appointed by will or *ex inquisitione* (i. e. after inquiry), was required (just as in English law) to give security for his faithful administration of the trust. And in actions, a person suing or being sued *per procuratorem* (i. e. by proxy) was required to give the *satisfactio* called "*de rato*," otherwise "*ratum rem dominum habiturum*" (i. e. that his principal would ratify or abide by the result whatever it was). And a defendant had usually to give also the *satisfactio* called "*judicatum solvi*," i. e. that the judgment (if against him) would be carried out by him—which carrying out involved in the case of lands the restitution of the possession and also of the interim rents and profits (*prodes litis et vindictium*). There was also a species of *satisfactio* called "*pro sui tantum personâ*," i. e. for the person of the defendant only, and this in English law corresponds to bail by defendant to appear in a personal action.—*Brown*.

SATISDATIO.—In the civil law, satisfaction; suretyship.

SATISFACTION.—

§ 1. The exhaustion of an obligation by performance (*q. v.*), or some act equivalent to performance. Thus, where a debt is due by one person to another, payment by the debtor or retainer by the creditor produces satisfaction of the debt.

§ 2. **Judgment mortgage—Satisfaction piece.**—A mortgage may be satisfied by payment, or a judgment by payment or execution, and when this has been done the defendant or mortgagor is entitled to have satisfaction entered; to do this a satisfaction piece or slip of paper, showing that the judgment or mortgage has been satisfied, is produced at the office where the judgment or mortgage is recorded. (Chit. Gen. Pr. 721; *Cattlin v. Kernot*, 3 Com. B. N. s. 796.) As to the entry of satisfaction, in England, in the case of registered judgments, *lites pendentes*, &c., see Stats. 23 and 24 Vict. c. 115; 30 and 31 Vict. c. 47. In most of the States, an entry to the effect that a mortgage has been satisfied is made on the margin of the record. In some States the mortgagee is compelled

by law to make this entry, in others the register or recorder of deeds may make it on proof that the mortgage is satisfied.

§ 3. **Satisfaction in equity.**—In equity, the doctrine of satisfaction is chiefly made use of in cases where satisfaction is implied from the ambiguous acts or language of testators or settlors. Thus, if a parent bequeaths a legacy to a child by way of portion, and afterwards (*e. g.* upon the marriage of the child) gives him a sum by way of portion, the latter sum generally operates as a satisfaction of the former, either completely or *pro tanto*; i. e. the child cannot claim the legacy on the death of the parent. So, if a testator gives a legacy to his creditor, it operates as a satisfaction of the debt, provided that the legacy is equal to or greater than the debt, and that no contrary intention appears. Haynes Eq. 323; Snell Eq. 194; Wats. Comp. Eq. 846; 2 White & T. Lead. Cas. 349

§ 4. Sometimes "satisfaction" is distinguished from "ademption," the former being applied to cases where a person has entered into an agreement or covenant to settle property on another, and afterwards gives that person an equal or greater benefit by his will, in such a manner that he must be presumed to have intended the gift to operate as a satisfaction of his agreement or covenant, and not to be an additional benefit; while "ademption" is the converse case of a person giving property by will and afterwards giving a similar benefit by deed impliedly in satisfaction of the former gift. The distinction lies in the difference between revocable and irrevocable instruments, and is of importance in this respect, that in cases of satisfaction the persons intended to be benefited by the covenant and the will must be the same, while in cases of ademption they may be different. Lord John Chichester v. Coventry, L. R. 2 H. L. 71. See CUMULATIVE; ELECTION, § 2; PERFORMANCE.

SATISFACTION, (distinguished from "performance"). 8 Com. Dig. 920.

— (equivalent to "pecuniary compensation"). 3 Bos. & P. 55.

— (when a devise is deemed). 4 Wheel. Am. C. L. 433; 6 Id. 418.

— (when legacy is not). 12 Wend (N. Y.) 67; 1 Bro. Ch. 129.

SATISFACTION, (in thirty-second section of Orphans' Court Act, Revised Laws, 787). 7 Halst. (N. J.) 316.

SATISFACTION IN EQUITY.—

See **SATISFACTION**, § 3.

SATISFACTION OF A DEBT, (what is). 8 Conn. 426; 14 Wend. (N. Y.) 116.

— (what is not). 2 Ark. 578; 12 Mass. 214 n.; 13 Wend. (N. Y.) 100; 5 Rawle (Pa.) 166; 4 Watts (Pa.) 378; 5 East 230.

— (when a legacy is). 12 Mass. 391; 10 Pick. (Mass.) 215; 1 Green (N. J.) Ch. 1.

— (when a legacy is not). 10 Ves. 1, 13.

SATISFACTION OF AN EXECUTION, (what is). 1 Cow. (N. Y.) 47 n.

SATISFACTION OF A JUDGMENT, (what is). 5 Watts (Pa.) 99.

— (what is, a question for the jury). 3 (Pa.) 13.

— (what is not). 2 Hill (N. Y.) 329; 1 Pa. 425; 6 Watts (Pa.) 445.

— (when levy is). 15 Mass. 137.

— (when levy is not). 11 Wend. (N. Y.) 125; 14 Id. 260; 23 Id. 490.

SATISFACTION PIECE.—See **SATISFACTION**, § 2.

SATISFACTION, SHALL BE, (in a release). 2 Hen. & M. (Va.) 38, 42.

SATISFACTION, TO MAKE, (in an agreement). 34 Ala. 491.

SATISFACTORY BOND, (in a bank charter). 3 Pick. (Mass.) 335.

SATISFACTORY PROOF, (in a statute). 10 Johns. (N. Y.) 167; 11 Id. 175.

SATISFACTORY TO SELECTMEN OF SAID TOWN, (in subscription to railroad company). 67 Me. 295.

SATISFIED, (in charge to jury). Phill. (N. C.) L. 146.

— (in covenant for price of land). 2 Johns. (N. Y.) 895.

— (indorsed on execution). 1 Bail. (S. C.) 23.

SATISFIED TERM.—See **TERM**.

Satius est petere fontes quam sectari rivulos (Lofft 606): It is better to seek the source than to follow the streamlets.

SATURDAY'S STOP.—A space of time from evensong on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland and the northern parts of England.—*Cowell*.

SAUNKEFIN.—The determination of the lineal race; a descent of kindred.—*Brit. c. cxix*.

SAVE AS AFORESAID.—See **ABSQUE HOC**.

SAVE HARMLESS, (construction of a promise to). 17 Mass. 172.

— (in a bond). 1 Johns. (N. Y.) Cas. 173; 2 Chit. 487; 1 Cro. 394; 2 Dowl. & Ry. 133; 3 Dyer 323 b; 8 East 593.

SAVE HARMLESS, (in a covenant). 8 Johns. (N. Y.) 198; 1 Barn. & C. 29; 2 Ch. Rep. 146 3 Salk. 109; 1 Str. 400; 1 Vern. 189.

SAVER-DE-FAULT.—To excuse.—*Termes de la Ley*.

SAVIGNY.—Friedrich Carl von Savigny, the greatest modern jurist, was born February 21st, 1779, at Frankfort-on-the-Main; became professor at Marburg, Landshut and Berlin, where he was made minister for the revision of the statutes; and died October 25th, 1861. He founded the historical school of jurisprudence. His principal works are—The Right of Possession (translated into English by Sir Erskine Perry); The Capacity of our Age for Legislation and Jurisprudence (translated into English by A. Hayward, under the title of "The Vocation of our Age, &c."); History of Roman Law in the Middle Ages; System of Modern Roman Law; and the Law of Obligations. Holtz. Encycl.

SAVING, (distinguished from excepting). Plowd. 361 a.

— (in a lease). Com. L. & T. 77.

— (in a statute, when void). 1 Bl. Com. 89.

SAVING THE STATUTE OF LIMITATIONS.—A creditor is said to "save the statute of limitations" when he saves or preserves his debt from being barred by the operation of the statute. Thus, in the case of a simple contract debt, if a creditor commence an action for its recovery within six years from the time when the cause of action accrued, he will be in time to save the statute.

SAVINGS BANKS.—

§ 1. **In American law**.—Institutions for the safe custody and increase of the savings of the industrious poor and persons of small means. They are banks to receive deposits of money however small, which is to accumulate at interest, and to be paid out to the depositors as required.

§ 2. **In English law**.—Provision was made by various statutes from 9 Geo. IV. c. 92, to 23 and 24 Vict. c. 137, for the formation and regulation of savings banks. By the Stat. 26 and 27 Vict. c. 87, these acts were repealed, and fresh provisions were made on the subject; but it was enacted that no new banks should be formed under the act unless approved by the Commissioners for the Reduction of the National Debt. The moneys of savings banks certified under the act are paid into the Bank of England to the

credit of the commissioners, and interest is allowed on them. Purchases of government stocks may be made by depositors in savings banks. (Stat. 16 and 17 Vict. c. 45.) Savings banks have also been established by government in connection with the post office under the acts 24 Vict. c. 14, and 26 Vict. c. 14. For the other acts, see *Chit. Stat. tit. Savings Banks*.

SAVINGS BANKS, (not charitable or benevolent corporations). 23 Minn. 92.

SAVOUR.—To partake of the nature of; to bear affinity to.

SAVOY.—One of the old privileged places, or sanctuaries. 4 Steph. Com. (7 edit.) 227 n.

SAXON-LAGE.—The law of the West Saxons.

SAY NOT LESS THAN, (in an agreement). 3 Eng. L. & Eq. 865.

SCABINI.—A word used for wardens at Lynn, Norfolk.—*Norf. Chart. Hen. VIII.*

SCACCARIUM.—A chequered cloth resembling a chess-board which covered the table in the Exchequer, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. Hence the Court of Exchequer or *curia scaccarii* derived its name. 3 Bl. Com. 44.

SCALAM.—The old way of paying money into the Exchequer.—*Cowell*.

SCALE OF COSTS.—By the additional rules made by order in council, dated the 12th August, 1875, a new scale of costs for the English Supreme Court is provided. There is a higher and a lower scale, which are applicable respectively to the matters specified in Ord. vi. of those rules; but the court or a judge may in any case direct the fees set forth in either of the two scales to be allowed to all, or either, or any of the parties, and as to all or any part of the costs. — *Wharton*.

SCAMNUM CADUCUM.—In old records, the cucking-stool (*q. v.*)—*Cowell*.

SCANDAL.—

§ 1. A report, rumor or action whereby one is affronted in public.

§ 2. In pleading, "scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause: to which may be added, that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous." Dan. Ch. Pr. 290.

Scandalous matter in a pleading is liable to be struck out on motion.

SCANDALOUS MATTER.—See SCANDAL, § 2.

SCANDALUM MAGNATUM.

—Slander of great men. Words spoken in derogation of a peer or judge, or other great officer of the realm. They are held to be particularly heinous, and although they may be such as would not be actionable in the case of a common person, yet when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury, which is redressed by an action on the case, founded on many ancient statutes, as well on behalf of the crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injuries sustained. But this action is now obsolete. 2 Steph. Com. (7 edit.) 611; 3 *Id.* 378 n.; 1 Broom & H. Com. 484; 3 *Id.* 132.

SCAPELLARE.—To chop; to chip or haggle.—*Spel. Gloss.*

SCATTERING, (on a ballot). 71 Me. 373.

SCA V A G E—**S C H E V A G E**—**S C H E W A G E**, or **S H E W A G E**.—A kind of toll or custom, exacted by mayors, sheriffs, &c., of merchant strangers, for wares showed or offered for sale within their liberties. Prohibited by 19 Hen. VII. c. 7.—*Cowell*.

SCA V A I D U S.—The officer who collected the scavage money.—*Cowell*.

SCA V E N G E R, (is a trader within the bankrupt laws). 1 Ves. & B. 217 n.

— (is not a trader within the bankrupt laws). 1 Rose 373.

SCEAT.—A small coin among the Saxons, equal to four farthings.

SC E I T H M A N.—A pirate or thief.

SCEPPA SALIS.—An ancient measure of salt, the quantity of which is now not known. — *Wharton*.

SCHAFFA.—A schenf.—*Cowell*.

SCHAR-PENNY—**SCHARN-PENNY**, or **SCHORN-PENNY**.—A small duty or compensation.—*Cowell*.

SCHEDULE.—A small scroll; a writing additional or appendant; an inventory.

SCHEDULE, (omission of, in an assignment). 5 N. H. 124.

— (when not necessary in a bill of sale). 4 Wheel. Am. C. L. 162.

SCHEME.—

§ 1. In English law, a scheme is a document containing provisions for regulating the management or distribution of property, or for making an arrangement between persons having con-

dicting rights. Thus, in the practice of the Chancery Division, where the execution of a charitable trust in the manner directed by the founder is difficult or impracticable, or requires supervision, a scheme for the management of the charity will be settled by the court. Tud. Char. Trusts 257; Hunt. Eq. 248; Dan. Ch. Pr. 1765.

§ 2. By the Charitable Trusts Acts (*q. v.*) the charity commissioners are empowered to provisionally approve and certify schemes which cannot be carried into effect without the authority of parliament, and report them to parliament to be included in a general act. Wats. Comp. Eq. 58. See *CY-PRES*; *INCLOSURE COMMISSIONERS*.

§ 3. By the Railway Companies Act, 1867, when a company is unable to meet its engagements with its creditors, the directors may prepare a scheme of arrangement between the company and the creditors, and file it in the Chancery Division; if it is assented to by three-fourths of each class of creditors and a majority of the shareholders, it may be confirmed by the court and enrolled, and then has the force of an act of parliament. Stat. 30 and 31 Vict. c. 127, § 6 *et seq.*; Dan. Ch. Pr. 1888.

SCHETES.—Usury.—*Cowell*.

SCHILLA.—A little bell used in monasteries.

SCHIREMAN.—A sheriff; the ancient name for an earl.

SCHIRRENS-GELD.—A tax paid to sheriffs for keeping the shire or county court.—*Cowell*.

SCHISM, (in religious society, defined). 5 Bush (Ky.) 401, 402, 415.

SCHISM-BILL.—The name of an act passed in the reign of Queen Anne, which restrained Protestant dissenters from educating their own children, and forbade all tutors and schoolmasters to be present at any conventicle or dissenting place of worship. The queen died on the day when this act was to have taken effect, (August 1, 1714,) and it was repealed in the fifth year of Geo. I.—*Wharton*.

SCHIST, (defined). 1 Holmes (U. S.) 167, 168.

SCHNAPPS, (is gin manufactured at Scheidam). 45 Cal. 467.

SCHOOL.—In the most general sense, any institution of learning, including academy, college, common school, high school, seminary, university, &c., (*see the various titles*), but commonly restricted to institutions of a subordinate or ordinary character which teach elementary learning to young people, in distinction from places for more advanced instruction. Of schools in this sense, there are two kinds—those which are maintained by private means, and in which each pupil enters by

virtue of a contract with the proprietor or teacher, and common or public schools, being those which are maintained at the expense of the public, and are open to all children of the locality for which each particular school is established. In a majority of cases in which the word "school" is used in reports and statutes of the States, it probably refers to these common schools, the schools thus specially known to the law; though this limitation is deduced from the connection only; it is not in the meaning of the word.—*Abbott*. See *EDUCATION ACTS*.

SCHOOL, (in act making it a criminal offense to interrupt). 28 Conn. 232.

— (trust of, when is not a charity). 14 Ves. 7.

SCHOOL DISTRICTS, (in State constitution). 82 Ill. 356.

SCHOOL-HOUSE, (is not an "out-house" within the act concerning crimes and punishments). 10 Conn. 144.

— (in tax act). 13 N. Y. 220.

SCHOOL-KEEPING, (is a "business"). 1 Mau. & Sel. 95, 99.

SCHOOLMASTER.—One employed in teaching a school.

SCHOOLMASTER, (not an addition). 5 Taunt. 759.

— (in militia act). 3 Pick. (Mass.) 390.

SCIENCE, (music is). 8 Mod. 211.

SCIENTER.—Knowingly. An allegation in a pleading or indictment that the defendant or accused person did a thing knowingly. Thus, in an indictment for receiving stolen goods, the allegation that the prisoner knew them to have been stolen is called the "*scienter*." (Pritch. Q. S. 325.) So where a person keeps an animal of a savage disposition, he is answerable for any injury it may do (even though he has done his best to keep it from doing harm), if reasonable ground can be shown for presuming that its ferocious character was known to him; this knowledge is technically called the "*scienter*." (Campb. Neg. 53; Underh. Torts 141.) Proof of the *scienter* is not necessary in actions for injury by dogs to sheep or cattle. (Stat. 28 and 29 Vict. c. 60.) The form was *quare quosdam canes ad mordendas oves consueverunt apud B. scienter retinuit* (Reg. Brev. 110b), thus justifying the decision that "every dog was entitled to at least one worry." *Fleming v. Orrs*, 2 Macq. 14.

SCIENTER, (how proved). 3 Wheel. Cr. Cas. 520.

Scienti et volenti non fit injuria (Bract. 20): An injury is not done to one who knows and wills it.

Scientia scilorum est mixta ignorantia (8 Ca. 159): The knowledge of smatterers is diluted ignorance.

Scientia utrinque par pares contrahentes facit (3 Burr. 1910): Equal knowledge on both sides makes the contracting parties equal.

SCILICET.—That is to say; to wit.

This is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but *intermedia*; neither is it a substantive clause of itself, but it is rather to usher in the sentence of another, and to particularize that which was too general before, or distribute that which was too gross, or explain that which was doubtful; and it must neither increase nor diminish the premises or *habendum*, for it gives nothing of itself; but it may make a restriction where the precedent words are not so very express but that they may be restrained. Hob. 171.

SCILICET, (office of). 2 Pick. (Mass.) 222.

— (effect of, in pleading). Yelv. 93; 1 Chit. Pl. 308.

— (when may be rejected). 6 Binn. (Pa.) 12.

— (repugnant to the preceding matter is void). 7 Cow. (N. Y.) 42, 45; 4 Johns. (N. Y.) 450; 2 Saund. 291 n.

SCINTILLA JURIS.—A spark or fragment of right. If a conveyance of land is made to A. and his heirs to the use of B. and his heirs until the happening of a certain event, and then to the use of C. and his heirs, the use is executed in B. and his heirs, by the Statute of Uses, so that A. has no seisin left in him. If then the event happens, who is seised to the use of C.? Formerly, it was supposed that on the happening of the event the original seisin reverted back to B., so that he was seised to the use of C., and that meantime a possibility of seisin, or *scintilla juris*, remained in him. (Wms. Real Prop. 295.) This doctrine was always discountenanced by the best authorities, (1 Hayes Conv. 61 *et seq.*; Sugd. Pow. 19; Fleta 273,) and was formally abolished, in England, by the Stat. 23 and 24 Vict. c. 38, § 7.

SCIRE FACIAS.—

§ 1. A *scire facias* is a writ founded upon some record, such as a judgment, recognizance, letters-patent, &c., and directs the sheriff to make known to (*scire facias*) or warn the person against whom it is brought to show cause why the person bringing it should not have advantage of the record, or (as in the case of a *scire facias* to repeal letters-patent) why the record should not be annulled and vacated. It is in all cases considered in law as an action, because the defendant may plead to it, (Co. Litt. 290b; Chit. Gen. Pr. 1140; Tidd Pr. 1090; Fost. Sci. Fa. 13; 2 Wms. Saund. 22, 71,) but in some cases it is an original writ, while in others it is rather a writ of execution.

§ 2. Formerly the writ always issued, in England, from the court in which the record on which it was founded was supposed to remain (Arch. Pr. 935), so that a *scire facias* on a judgment in the Queen's Bench would be issued out of the Court of Queen's Bench. At the present day, therefore, it would seem that such a *scire facias* would be brought in the Queen's Bench Division. (Jud. Act, 1873, § 34.) Similarly a *scire facias* on a receiver's recognizance is issued out of the Petty Bag Office (*q. v.*) Dan. Ch. Pr. 1606.

§ 3. If the sheriff executes the writ by warning the defendant, he returns *scire fecit* ("I have caused to be warned"); if he does not warn him, he returns *nihil*. After the return the plaintiff enters a rule to appear (*see* RULE, § 2); if the defendant fails to appear, judgment goes against him by default. If, however, he appears, the plaintiff delivers a declaration praying execution, and the pleadings proceed as in an action at law. Dan. Ch. Pr. 1069 *et seq.* *See* PLEADING, § 10.

§ 4. *Scire facias* to repeal letters patent.—In England, a *scire facias* is an original action when it is issued to repeal letters patent: thus, if the queen by her letters patent has granted one and the self-same thing to several persons, the first patentee may sue out a *scire facias* to repeal the subsequent letters patent; or when the queen has been deceived or mistaken she may by *scire facias* repeal her own grant. (For other instances, *see* Fost. 12, 228, 236. *See, also*, 3 Bl. Com 230; Chit. Prerog. 330.) By the act of congress of February 21st, 1793, ch. ii., process in the nature of a *scire facias*, founded on a record to be made of the preliminary pro-

ceedings, is prescribed as the mode for repealing letters patent. The jurisdiction is vested in the United States Circuit Courts.

§ 5. **On recognizance.**—A *scire facias* is a judicial writ, but in the nature of an original proceeding, when it is issued by the conusee of a recognizance (*q. v.*) to have execution against the consor for the debt. (Fost. 229, 279, 327; 2 Wms. Saund. notes to Underhill v. Devereux; Chit. 888, 1096.) The *scire facias* is in lieu of an ordinary action.

§ 6. A *scire facias* is sometimes a continuation of a former action, being merely an interlocutory proceeding and in the nature of process or execution, as in the case of a *scire facias quare executionem non* (*infra*, § 11); sometimes a proceeding after the action has terminated, as in the case of a *scire facias ad rehabendam terram* (*infra*, § 9). Chit. 1140.

§ 7. **Against shareholders.**—The most important instance in which a *scire facias* of this kind is now brought is where it is required to enforce a judgment against the shareholders of a company. By Stat. 7 Geo. IV. c. 46; 7 Will. IV. and 1 Vict. c. 73; 8 and 9 Vict. c. 16, and other acts, if execution has been issued against a company subject to one of those acts (*e. g.* a railway company), and the property is insufficient, a *scire facias* may (with certain limitations as to past members, the amount for which each shareholder is liable, obtaining leave of the court, &c.) be issued against any of the shareholders, requiring them to show cause why execution should not be awarded against their property. (Chit. 1177–1196; Hodges Railw. 80 *et seq.*; Ilfracombe Rail. Co. v. Devon and Somerset Rail. Co., L. R. 2 C. P. 15; Portal v. Emmons, 1 C. P. D. 664; Sm. Ac. (11 edit.) 339; Fost. 106.) It is stated in Archbold's Practice (p. 935) that an action of *scire facias* against shareholders is commenced by writ of summons in the same way as an ordinary action and follows a similar course. This may be open to question.

§ 8. The other kinds of *scire facias* in the nature of process or execution are either obsolete or very rare. Thus, a simple application to the court has, in most jurisdictions, been substituted for the *scire facias* formerly required to revive a judgment, or to issue execution on a judgment of assets *quando acciderint*. See Sm. Ac. 177, 202. See, also, JUDGMENT, § 12; REVIVAL, § 4.

The following are the principal kinds of *scire facias* having distinctive names:

§ 9. **Ad rehabendam terram—By crown.**—A *scire facias ad rehabendam terram* lies to enable a judgment debtor to recover back his lands taken under an *elegit* when the judgment creditor has satisfied or been paid the amount of his judgment. (Chit. 692; Fost. 58. See ELEGIT.) A *scire facias* in the nature of execution is sometimes required by the crown, *e. g.* to have execution of a debt secured by recognizance, or to issue execution on an office found (*q. v.*) (Fost. 233); if it is determined in favor of the crown an extent may be issued. Man. Exch. Pr. 136 *et seq.* See EXTENT.

§ 10. **Quare restitutionem non.**—*Scire facias quare restitutionem non* lies where execution on a judgment has been levied, but the money has not been paid over to the plaintiff, and the judgment is afterwards reversed in error or on appeal; in such a case a *scire facias* is necessary before a writ of restitution can issue. Chit. 582; Fost. 64.

§ 11. **Ad audiendum errores—Quare executionem non.**—*Scire facias ad audiendum errores* and *quare executionem non* were writs used in proceedings in error, the first by the plaintiff, the second by the defendant in error, to compel the opposite party to plead. They are both obsolete. Chit. 1341 *et seq.*; Fost. 213.

Scire facias is sometimes employed in proceedings in the Mayor's Court of London.

§ 12. **Lord Mayor's Court.**—In proceedings in foreign attachment (*q. v.*), when a certain period has elapsed after the attachment has been served, the plaintiff is at liberty to issue a *scire facias*, which is a warning to the garnishee to appear to show cause why the plaintiff should not have execution of the money, &c., attached; the garnishee either appears or suffers judgment to go by default. Brand. For. Att. 13.

§ 13. If in a suit in the Mayor's Court the defendant's property has been attached and execution issued against the garnishee, the defendant cannot appear to the plaint in the ordinary course, because the proceedings in attachment are founded on his fictitious default in appearing to the plaint; and, therefore, if he wishes to dispute the plaintiff's claim, he must issue a writ of *scire facias ad disprobandum debitum*; when the plaintiff has appeared to the writ the defendant declares, and the action proceeds as in ordinary cases unless the plaintiff prays *stet billa* (*q. v.*) Brand. For. Att. 113.

SCIRE FACIAS, (defined). 56 Ala. 255; 2 Saund. 71 n.; Co. Litt. 290 b.

— (is a new and independent action). 1 Halst. (N. J.) 305.

— (when lies to revive a judgment). Coxe (N. J.) 113.

— (must issue from the court rendering judgment). Penn. (N. J.) 529.

SCIRE FACIAS AD AUDIENDUM ERRORES.—See SCIRE FACIAS, § 11.

SCIRE FACIAS AD DISPROBANDUM DEBITUM.—See SCIRE FACIAS, § 12.

SCIRE FACIAS AD REHABENDAM TERRAM.—See **SCIRE FACIAS**, § 9.

SCIRE FACIAS FOR THE CROWN.—See **SCIRE FACIAS**, § 9.

SCIRE FACIAS QUARE RESTITUTIONEM NON.—See **SCIRE FACIAS**, § 10.

SCIRE FEOL.—The sheriff's return on a *scire facias*, that he has caused notice to be given to the party against whom the writ was issued.

SCIRE FIERI INQUIRY.—In English law, a writ issued against an executor against whom judgment has been obtained for a debt due by his testator when the property of the testator has been found insufficient (technically when the sheriff has returned *nulla bona* to a *fi. fa. de bonis testatoris*), and the executor is supposed to have committed a *devastavit*. It commands the sheriff that in case there shall be no goods of the testator remaining in the hands of the executor, he shall summon a jury to inquire if the defendant has wasted the goods of the testator; and if a *devastavit* be found, that he shall warn the defendant to show cause why the plaintiff should not have a *feri facias de bonis propriis* against him. The name is compounded of the names of the three proceedings, *scire facias*, *feri facias*, and inquiry, of which the process consists. It is seldom adopted in practice. Sm. Ac. (11 edit.) 369; 1 Wms. Saund. 248. See **DEVASTAVIT**; **FIERI FACIAS**, § 3; **JUDGMENT**, § 13.

Scire proprie est rem ratione et per causam cognoscere (Co. Litt. 183; Lofft 166): To know properly is to know the reason and cause of a thing.

SCIREWYTE.—The annual tax, or prestation paid to the sheriff for holding the assizes or county courts. Par. Antiq. 573.

SCITE, or SITE.—The setting or standing of any place; the seat or situation of a capital message, or the ground whereon it stands.—*Jacob*.

SCOLD.—A troublesome and angry woman, who, by brawling and wrangling amongst her neighbors, breaks the public peace, increases discord, and becomes a public nuisance to the neighborhood. 4 Steph. Com. (7 edit.) 276. See **CASTIGATORY**; **COMMON SCOLD**; **CUCKING STOOL**.

SCOLD, COMMON, (what is necessary to constitute). 6 Mod. 213.

SCONCE.—A mulct or fine.

SCOPE, (of duty of officer). 75 Ill. 246.

SCOT.—In old English law, a tax; a tribute.

SCOT AND LOT.—See **LOT AND SCOT**.

SCOT AND LOT VOTERS.—Voters in certain boroughs entitled to the franchise in

virtue of their paying this contribution. 2 Steph. Com. (7 edit.) 360.

SCOTAL, or SCOTALE.—An extortionate practice by officers of the forest who kept ale-houses, and compelled the people to drink at their houses for fear of their displeasure. Prohibited by the Charter of the Forest, c. 7.—*Wharton*.

SCOTCH PEERS.—Peers of the kingdom of Scotland; of these sixteen are elected by the rest and represent the whole body. They are elected for one parliament only. See 6 Anne c. 23, amended by 10 and 11 Vict. c. 52; 14 and 15 Vict. c. 87; and 15 and 16 Vict. c. 35.

SCOTS.—Assessments by commissioners of sewers.

SCOTTARE.—To pay scot, tax or customary dues.—*Cowell*.

SCOUNDREL, (not an actionable word). 1 Chit. Gen. Pr. 44.

SCRAMBLING POSSESSION, (in forcible entry). 54 Cal. 176.

SCRAWL.—Used in some States for scroll (*q. v.*) "The word 'seal,' written in a *scrawl* attached to the name of an obligor, makes the instrument a specialty." 2 Fla. 418.

SCREENED COAL, (in a contract). 77 Pa. St. 170.

SCRIBA.—A scribe; a secretary. *Scriba regis*: a king's secretary; a chancellor.—*Spel. Gloss*.

Scribere est agere (2 Rolle 89): Writing is equivalent to "doing."

In treason, for example, if treasonable words be set down in writing, this writing, as arguing more deliberate intention, has been held to be an overt act of treason.

SCRIP.—"Scrip certificate" seems to be a contraction for "subscription certificate," i. e. a certificate of the amount subscribed for by the applicant.

§ 1. A scrip certificate (or shortly "scrip") is an acknowledgment by the projectors of a company or the issuers of a loan that the person named therein (or more commonly the holder for the time being of the certificate) is entitled to a certain specified number of shares, debentures, bonds, &c. It is usually given in exchange for the letter of allotment, and in its turn is given up for the shares, debentures or bonds which it represents. (Lind. Part. 127.) Scrip is chiefly used in the case of bonds and shares which are payable by instalments, so that they cannot be issued until all the instalments are paid; therefore, as soon as bonds

or shares have been allotted to a subscriber or applicant, a scrip certificate, certifying that on due payment of the unpaid instalments, the bearer will be entitled to receive bonds or shares to the amount of the certificate, is given to the allottee. (*See ALLOT*, § 3) Scrip certificates are negotiable instruments. *Goodwin v. Roberts*, L. R. 9 Ex. 357; 1 App. Cas. 476; *Rumball v. Metropolitan Bank*, 2 Q. B. D. 194.

§ 2. *Scrip companies*.—It is said that there are companies (called "scrip companies") in which the scrip is not required to be exchanged for shares, the scripholders being the shareholders. *Lind. Part.* 128.

SCRIP RECEIPTS, (are not shares). 2 Car. & P. 521.

SCRIPT.—

§ 1. A writing; the original or principal document.

§ 2. In English probate practice, a will, codicil, draft of will or codicil, or written instructions for the same. If the will is destroyed, a copy or any paper embodying its contents becomes a script, even though not made under the direction of the testator. *Browne Prob. Pr.* 280.

Scriptæ obligationes scriptis tolluntur, et nudi consensus obligatio, contrario consensu dissolvitur (*Jur. Civ.*): Written obligations are superseded by writings, and an obligation of naked assent is dissolved by assent to the contrary.

SCRIPTORIUM.—In old records, a place in monasteries where writing was done.—*Spel. Gloss.*

SCRIPTUM.—A writing; something written. *Fleta* l. 2, c. 60, § 25.

SCRIPTURE.—The canonical books of the Old and New Testament. All profane scoffing of the Holy Scripture, or exposing any part thereof to contempt and ridicule, is punishable by fine and imprisonment. 4 Steph. Com. (7 edit.) 207.

SCRIVENER.—In English law, one who draws contracts; one whose business is to place out money at interest, receiving a bonus or commission for his trouble.

When a solicitor is the general depository of money of his client and other persons who employ him, not simply in his character of solicitor, but as a money agent, to invest their money on securities at his discretion, allowing him procuration fees for any sum laid out on bond or mortgage, as well as a fee or charge for preparing the deeds, such a course of dealing is substantially the business of a scrivener. 1 Holt 507; 3 Campb. 539.

SCRIVENER, (defined). 3 Doug. 214; *Mont.* 82; 2 Sch. & L. 415.

SCRIVENER, (what constitutes). 2 Esp. 556. — (who is not). 3 Campb. 537; *Holt* 654; 1 Rose 402; 2 Ves. & B. 31, 175.

SCROLL.—A mark which supplies the place of a seal.

SCROLL, (is a sufficient seal). 1 Wash. (U. S.) 43; 3 Gill & J. (Md.) 234.

— (is not a seal). 8 Pet. (U. S.) 371; 2 Pick. (Mass.) 11; 6 Halst. (N. J.) 174; 1 Harr. (N. J.) 328.

— (on a contract to be performed in another State, where it constitutes a seal, will not sustain covenant in this State). 4 Cow. (N. Y.) 508.

SCROOP'S INN.—An obsolete law society, also called "Serjeants' Place," opposite to St. Andrew's Church, Holborn, London.

SCTm.—A common mode of writing Scitum, a decree of the Roman people.

SCULPTURE.—*See COPYRIGHT*, § 4; *REGISTRATION OF DESIGNS*.

SCUSSUS.—Shaken or beaten out; threshed grain.—*Spel. Gloss.*

SCUTAGE.—Escuage (*q. v.*)

SCUTAGE, (defined). 1 Bl. Com. 310; 2 *Id.* 74.

SCUTAGIO HABENDO.—*See DE SCUTAGIO HABENDO*.

SCUTE.—An ancient French gold coin of the value of 3s. 4d.

SCUTELLA.—A skuttle; anything of a flat or broad shape like a shield.—*Cowell*.

SCUTELLA ELEEMOSYNARIA.—An alms-basket.

SCUTUM ARMORUM.—A shield or coat of arms.—*Cowell*.

SOYLDWIT.—A mulct for any fault.

SOYRA.—A fine imposed upon such as neglected to attend the *scyregemot* courts, which all tenants were bound to do.

SCYREGEMOT, or *SCIREMOT*.—A court held by the Saxons twice every year, by the bishop of the diocese and the earldorman in shires that had earldormen; and by the bishop and the sheriff where the counties were committed to the sheriff, &c., wherein both the ecclesiastical and temporal laws were given in charge to the county.—*Seld. Tit. Hon.* 628.

SE DEFENDENDO.—*See HOMICIDE*, § 8.

SEA.—The main or high seas are not subject to the common law. The main sea

begins at the low-water mark, but between the high-water mark and the low-water mark, where the sea ebbs and flows, the common law and admiralty have *divisum imperium*, and alternate jurisdiction; the one upon the water when it is full sea; the other upon the land when it is an ebb.—*Wharton*. See ADMIRALTY; HIGH SEAS; KING'S CHAMBERS; NAVIGATION; TERRITORIAL WATERS. As to sea-walls, see FRONTAGE.

SEA, (defined). 1 Tuck. (N. Y.) 44.
 — (tidal, navigable river not). 44 L. T. (N. S.) 747.
 — (public have no common law right of bathing in). 5 Barn. & Ald. 268.
 — (in statute of wills). 8 N. Y. 196, 199.
 SEA, AT, (in an insurance policy). 14 Mass. 35.

SEA BATTERIES. — Assaults by masters in the merchant service upon seamen, at sea.

SEA-BED.—All that portion of land under the sea that lies beyond the sea-shore, and which, equally with the sea-shore, belongs *primâ facie* to the sovereign, but may be acquired by the subject, either by grant or adverse possession.

SEA-GREENS.—In the Scotch law, grounds overflowed by the sea in spring tides.—*Bell Dict.*

SEA-GROUNDS, OYSTER LAYINGS AND SHORES, (in a deed). 4 Barn. & C. 485, 496.

SEA-LAWS.—Laws relating to the sea, as the laws of Oleron, &c.

SEA-LETTER, or SEA BRIEF.—A document expected to be found on board of every neutral ship. It specifies the nature and quantity of the cargo, the place whence it comes, and its destination. See *Arn. Ins.* (4 edit.) 569.

SEA-LETTER, (in an insurance policy). 1 Johns. (N. Y.) 192; 2 *Id.* 531.

SEA, PERIL OF THE, (what is). Peake Add. Cas. 183.

— (in an insurance policy). 3 Mass. 460.

SEA, PROCEED TO, (in act for the regulation of seamen). 9 Serg. & R. (Pa.) 154.

SEA-REEVE.—An officer in maritime towns and places, who takes care of the maritime rights of the lord of the manor, watches the shore, and collects the wreck.

SEA RISK, (what is not). 11 Johns. (N. Y.) 9.
 — (in policy of insurance). 8 Pet. (U. S.) 585.

SEA ROVERS.—Pirates and robbers at sea.

SEA SERVICE, (in United States militia laws). 14 Mass. 394.

SEA-SHORE.—The space of land between high and low-water mark. See FORESHORE.

SEA-SHORE, (defined). 15 Me. 237; 6 Mass. 435, 439.

— (in a deed). 5 Gray (Mass.) 336.

SEA STORES, (in a statute). 1 Baldw. (U. S.) 504.

SEA, USED THE, (in a statute). 1 East 472.

SEA WEED, (cast on shore, belongs to the owner of the soil). 2 Johns. (N. Y.) 322.

SEAL.—

§ 1. Wax or wafer with an impression. The formality of affixing a seal to a document is one of the oldest modes of expressing the intention to be bound by it, derived from the times when few persons could sign their own names. (Wms. Real Prop. 147.) It is still a solemn mode of expressing assent to a written instrument, and when done with that intention makes the instrument a deed: the intention is generally expressed by the additional formality of delivery (*q. v.*); and, see DEED; EXECUTION; SIGN.

§ 2. Corporation.—Every corporation aggregate must have a common seal, for being an invisible body it cannot manifest its intention by any personal act or discourse, but only acts and speaks by its common seal, (1 Bl. Com. 475; Shep. Touch. 56.) except where it is represented by an officer, agent or attorney, and in a few cases where it would be inconvenient to require the seal, *e. g.* in every-day matters of business. Poll. Cont. 130.

As to the seals of the crown, see GREAT SEAL; PRIVY SEAL; see, also, SIGN MANUAL; SIGNET.

SEAL, (defined). 5 Pick. (Mass.) 496; 5 Johns. (N. Y.) 244; 4 Kent Com. 452.

— (what is). Hempst. (U. S.) 624; 3 McLean (U. S.) 332, 335; 3 Gill & J. (Md.) 234; 1 Halst. (N. J.) 169; 6 *Id.* 174; 5 Duer (N. Y.) 462; 1 Serg. & R. (Pa.) 72.

— (what is not). 50 Me. 549; 10 Allen (Mass.) 251; 2 Pick. (Mass.) 11; 12 Johns. (N. Y.) 198; 2 Serg. & R. (Pa.) 502; 1 Munf. (Va.) 487.

— (history and origin of a common seal). Ang. & A. Corp. § 215.

— (distinguished from "scroll"). 1 Harr. (N. J.) 328.

SEAL, (impressed directly upon paper, is a nullity). 3 Hill (N. Y.) 493.

— (at common law, must be impressed upon wax). 2 Hill (N. Y.) 227.

— (is an essential part of a deed). 16 Mass. 47.

— (promissory note under, is not negotiable). 15 Wend. (N. Y.) 256.

— (omission of, to a referee's report). 7 Serg. & R. (Pa.) 204.

— (cannot be used a second time). 19 Johns. (N. Y.) 170.

— (of a private corporation is not evidence of its own authenticity). 2 Halst. (N. J.) 352.

— (of one State is taken notice of judicially in the courts of others). 2 Conn. 85; 1 Den. (N. Y.) 376.

SEAL AND EXECUTE, (in an award). 1 Mod. 104.

SEAL, CORPORATE, (affixed to a deed is *prima facie* evidence that it was affixed by authority). 6 Paige (N. Y.) 54.

SEAL OF A COURT OF A FOREIGN COUNTRY, (must be proved). 3 Leigh (Va.) 816; 5 Wheel. Am. C. L. 130.

SEAL OF A FOREIGN STATE OR NATION, (proves itself). 3 Leigh (Va.) 816.

SEALED, (inserted in a written instrument, effect of). 1 Harp. (S. C.) 3; 2 Wheel. Am. C. L. 192.

SEALED AND DELIVERED.—

The common formula of attestation of deeds and other instruments, written immediately over the witnesses' names. This has been retained without change from the old practice, when *sealing alone*, without signing, constituted a sufficient execution or authentication. (2 Bl. Com. 306. See 15 Ohio 107.)—*Burrill*.

SEALED AND DELIVERED, (in a written instrument). 4 Wheel. Am. C. L. 241.

SEALED INSTRUMENT, (what is not). 1 Halst. (N. J.) 176; 5 Johns. (N. Y.) 239.

— (signed by one partner in the firm name). 5 Watts (Pa.) 159.

SEALED UP, (meaning of). 44 Conn. 225, 227.

SEALED WITH MY SEAL, (effect of, on a bond when not inserted in). Dyer 19a.

SEALED WITH OUR SEALS, (in a bond). 1 Car. & P. 417.

SEALER.—An officer in Chancery who sealed the writs and instruments. The offices of sealer and deputy sealer are abolished by 15 and 16 Vict. c. 87, § 23.

SEALING, (of a deed). 1 Stark. Ev. 332.

— (is not necessary to a devise). 8 Com. Dig. 409.

SEALING UP.—Where a party to an action has been ordered to produce a document, part of which is either irrelevant to the matters in question or is privileged

from production, he may, by leave of the court, seal up that part, if he makes an affidavit stating that it is irrelevant or privileged. (Dan. Ch. Pr. 1681.) The sealing up is generally done by fastening pieces of paper over the part with gum or wafers.

SEAL-PAPER.—A document issued by the lord chancellor, previously to the commencement of the sittings, detailing the business to be done for each day in his court, and in the courts of the lords justices and vice-chancellors. The master of the rolls in like manner issued a seal-paper in respect of the business to be heard before him. Sm. Ch. Pr. 9.

SEAMEN.—

§ 1. Sailors; mariners; persons whose business is navigating ships. In its most general sense, "seaman" includes the master or other officer of the ship, as well as one of the crew, but generally it means a common sailor only.

§ 2. The principal statutory enactments for the protection of seamen are those requiring agreements for service on board ship to contain certain particulars (*see SHIPPING ARTICLES*), and requiring vessels to carry proper provisions, water, lime or lemon juice, and medicines. The enactments with regard to wages, advance notes, &c., are referred to under title ALLOT, § 4. Those with regard to unseaworthy ships are referred to under title SEAWORTHINESS. As to overloading and defective loading of grain ships, &c., *see* MERCHANT SHIPPING.

SEANCE.—In the French law, a session, as of some public body.

SEARCH.—In international law, the right of search is the right on the part of ships of war to visit and search merchant vessels during war, in order to ascertain whether the ship or cargo is liable to seizure. Resistance to visitation and search by a neutral vessel makes the vessel and cargo liable to confiscation. Numerous treaties regulate the manner in which the right of search must be exercised. Mun. Int. Law 433. *See* CONTRABAND.

SEARCH, (for paper, when sufficient to admit secondary evidence). 7 Pet. (U. S.) 99.

SEARCH WARRANT.—An authority requiring the officer to whom it is addressed to search a house or other place

therein specified, for property therein alleged to have been stolen or secreted. 4 Steph. Com. (7 edit.) 347.

SEARCH WARRANT, (necessary requisites of). 13 Mass. 286.

— (when legal). 10 Johns. (N. Y.) 263.

— (trepass will not lie against a person having). 6 Wend. (N. Y.) 382.

SEARCHER.—In English law, an officer of the customs, whose business it is to examine ships outward-bound, in order to ascertain if they have any prohibited or unaccustomed goods on board, &c. Also, a similar officer who examines the baggage of passengers arriving by ship, with a similar object.

SEARCHES.—

§ 1. On a contract for the sale of real estate, it is usual for the purchaser, before the completion of the purchase, to examine certain records and registers for the purpose of seeing whether they contain notice of any fact affecting the title to the property. This is called "searching for incumbrances," or "searching the title." The searches generally made are for conveyances, mortgages, judgments, *lites pendentes* and other charges on the land. Sometimes also the lists of bankrupts and insolvents, and the register of bills of sale, are searched, if any doubt exists as to the pecuniary circumstances of the vendor. Dart. Vend. 454.

§ 2. Similarly on the sale or mortgage of a ship, the register of ships is searched, to ascertain the condition of the title. See MERCHANT SHIPPING; also, ANNUITY; JUDGMENT, § 16; LAND REGISTRY; LIS PENDENS; VENDORS AND PURCHASERS.

SEAS, BEYOND THE, (in statute of limitations). 7 Ohio (U. S.) 628.

SEASON, (what is, as applied to the pasturing a cow). 14 East 283.

SEASONABLE TIME, (what is). Willes 202.

SEATED LANDS.—In the early land legislation of some of the United States, *seated* is used, in connection with improved, to denote lands of which actual possession was taken. (5 Pet. (U. S.) 468.)—*Bouvier*.

SEATED LANDS, (defined). 6 Watts (Pa.) 269.

SEAUPOWERPE.—In old records, wreck; that which is cast up by the sea.—*Spel. Gloss*.

SEAWORTHINESS.—

§ 1. The question whether a ship is or was at a given time seaworthy is chiefly of importance with reference to the liability

of the owner and the underwriters or insurers in the event of her loss. In this use of the term, "seaworthiness" means that the vessel is in a fit state, at the time of sailing, (not merely at the time of loading the cargo; *Cohn v. Davidson*, 2 Q. B. D. 455,) as to repairs, equipment and crew, and in all other respects, to encounter the ordinary perils of the voyage insured. *Maud. & P. Mer. Sh.* 387.

§ 2. Warranty of seaworthiness.—Where there is no agreement to the contrary, a ship-owner who contracts for the conveyance of merchandise in his ship, or contracts for her insurance, impliedly warrants that she is seaworthy; that is to say, if she is lost, and it turns out that she was not seaworthy at the time of sailing, in the one case the owner is liable to the owner of the goods for their loss, and in the other case the insurers or underwriters are discharged from liability under the policy, notwithstanding the *bonâ fides* and honesty of the ship-owner. *Kopitoff v. Wilson*, 1 Q. B. D. 377; *Cohn v. Davidson*, 2 *Id.* 455; *Maud. & P. Mer. Sh.* 387; *Sm. Merc. L.* 377.

§ 3. Survey of unseaworthy ships.—If it is alleged by one-fourth of the seamen belonging to a ship, that by reason of unseaworthiness, overloading, defective equipment, or the like, she is not in a fit condition to go to sea, the court having cognizance of the case may have the ship surveyed. In England, the board of trade may also order a survey if they receive a complaint, or have reason to believe that a ship is unfit to proceed to sea. *Stats.* 34 and 35 *Vict. c.* 110; 36 and 37 *Id.* 85; 39 and 40 *Id.* 80.

§ 4. Provision is made by the English Merchant Shipping Act, 1854, and by the Passengers Acts, 1855, 1863, and 1870, for the proper equipment and survey of ships in the interest of passengers.

§ 5. Every person who sends a ship to sea in an unseaworthy state, so as to endanger the life of any person on board, is guilty of a misdemeanor, unless he proves that he used all reasonable means to make her seaworthy. *Stat.* 39 and 40 *Vict. c.* 80.

SEAWORTHINESS, (what constitutes). 19 How. (U. S.) 162; 1 *Am. Dec.* 165 n.

— (in an insurance policy). 2 Metc. (Mass.) 432.

— (implied warranty of, requires what), 4 Duer (N. Y.) 234.

SEAWORTHY, (defined). 12 Cush. (Mass.) 517, 521; 3 Taunt. 299; 3 Kent Com. 237.

— (in law, a ship is presumed to be). 6 Wheat. Am. C. L. 107.

— (when there is an implied warranty that a ship is). 8 Bosw. (N. Y.) 33.

— (what is necessary to constitute a ship). 4 Sawy. (U. S.) 292.

SEBASTOMANIA.—In medical jurisprudence, religious insanity; demonomania.

SECK is technically applied to certain services and obligations to signify that they create no tenure between the person from whom and the person to whom they are due, as opposed to those services of "homage, fealty, and escuage, which cannot become secke or dry, but make tenure whereunto distresses, escheats and other profits be incident." (Co. Litt. 151a.) At the present day the term is hardly ever used except in the phrase "rent seck." See Co. Litt. 147b and 151b, and Hargrave's note (5). See, also, RENT, § 8.

SECOND COUSINS, (in a will). 13 Cent. L. J. 5, and cases cited.

SECOND DELIVERANCE, WRIT OF.—A judicial writ that lies, after a nonsuit of the plaintiff in replevin, and a *retorno habendo* of the cattle replevied, adjudged to him that distrained them, commanding the sheriff to replevy the same cattle again, upon security given by the plaintiff in the replevin for the redelivery of them if the distress be justified. It is a second writ of replevin, and is practically obsolete. F. N. B. 68; 2 Chit. Arch. Pr. (12 edit.) 1087, 1094. See REPLEVIN, § 3.

SECOND DISTRESS.—By 17 Car. II. c. 7, § 4, in all cases where the value of the cattle distrained shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are due, his executors or administrators, may distrain again for the said arrears; but a second distress cannot, it seems, be at all justified, where there is enough which might have been taken upon the first, if the distrainer had then thought proper; for a man who has an entire duty, as rent, for example, shall not split the entire sum, and distrain for one part of it at one time, and for the other part of it at another time, and so *toties quoties* for several times, for that would be great oppression.—Wharton.

SECOND SURCHARGE, WRIT OF.—If, after admeasurement of common, upon a writ of admeasurement of pasture, the same defendant surcharges the common again, the plaintiff may have this writ of second surcharge *de secunda superoneratione*, which is given by the Stat. West. 2, 13 Edw. I. c. 8.—Wharton.

SECONDARY.—An officer of the Courts of King's Bench and Common Pleas, so called because he was *second* to the chief officer, *i. e.* to the sheriff, *semlle*, for he was and is the chief

executive officer, the judge being judicial merely and not executive. The secondaries of these courts were abolished by 7 Will. IV. and 1 Vict. c. 30 (1 Arch. Pr. 11), and the existing masters were by the same act appointed in their stead. But at the present day there is still a law officer in the city of London who bears the name of secondary, *seil*, because he is second to the chief officer (*i. e. semlle*, the judge) of the City of London Court, and who was originally the sheriff; whence the secondary is for some purposes like an under-sheriff. His principal duties as secondary are to assess damages on writs of inquiry upon judgments given in any of the courts sitting within the city.—Brown.

SECONDARY CONVEYANCES.

—Those which presuppose some other conveyance precedent, and only serve to confirm, alter, retain, restore, or transfer the interest granted by the original conveyance. They are otherwise called "derivative," and are: (1) Releases; (2) confirmations; (3) surrenders; (4) assignments; and (5) defeasances. See CONVEY, § 4.

SECONDARY EVIDENCE.—That species of proof which is admitted on the loss of primary evidence. There are no degrees of this evidence. For example, if a letter be lost it is as good to recite it from memory as to produce a copy. It is the province of the judge to decide whether a document produced be original or not, and until he decide it is not, no secondary evidence can be put in. See EVIDENCE, § 11; HEARSAY EVIDENCE; NOTICE TO ADMIT; NOTICE TO PRODUCE.

SECONDARY USE.—A use limited to take effect in derogation of a preceding estate; otherwise called a "shifting use," as a conveyance to the use of A. and his heirs, with a proviso that when B. returns from India, then to the use of C. and his heirs. 1 Steph. Com. (7 edit.) 546.

SECONDS.—Assistants at a duel. They are equally guilty with the principals under most of the statutes against dueling. See CHALLENGE TO FIGHT; DUELLING.

SECRET COMMITTEE.—A secret committee of the House of Commons is a committee specially appointed to investigate a certain matter, and to which secrecy being deemed necessary in furtherance of its objects, its proceedings are conducted with closed doors, to the exclusion of all persons not members of the committee. All other committees are open to members of the house, although they may not be serving upon them.—Brown.

SECRET PARTNERSHIP, (defined). 5 Pet. (U. S.) 555; 49 N. H. 225.

SECRET TRUSTS.—Where a testator gives property to a person, on a verbal promise by the legatee or devisee that he will hold it in trust for another person, this is called a "secret trust." The English rule is, that if the secret trust would have been valid as an express trust, it will be enforced against the legatee or devisee, while if it would have been invalid as an express trust, *e. g.* by contravening the provisions of the Mortmain Act, the gift fails altogether, so that neither the devisee or legatee, nor the object of the trust, takes any benefit by it. Lew. Trusts 51; Wats. Comp. Eq. 54.

SECRETARY.—One intrusted with the management of business; ore who writes for another; an officer attached to a public establishment.

SECRETARY, (of a banking company is not a certifying officer). 14 Mass. 178; 3 Wheel. Am. C. L. 491.

— (who signs a lottery ticket is not liable to the holder). 2 Binn. (Pa.) 201.

— (in statutes regarding the service of attachments and executions). 6 Conn. 428.

SECRETARY OF DECREES AND INJUNCTIONS.—An officer of the English Court of Chancery. The office was abolished by 15 and 16 Vict. c. 87, § 23.

SECRETARY OF PRESENTATIONS.—*See* PRESENTATION OFFICE.

SECRETARY OF STATE.—

§ 1. In American law.—A cabinet officer of the United States. (*See* CABINET.) In most if not all of the State governments there is also a secretary of State, whose office is one of importance and responsibility.

§ 2. In English law, the secretaries of State are cabinet ministers attending the sovereign for the receipt and dispatch of letters, grants, petitions, and many of the most important affairs of the kingdom, both foreign and domestic. There are five principal secretaries, one for the home department, another for foreign affairs, a third for the colonies, a fourth for war (26 and 27 Vict. c. 12), and a fifth for India. (21 and 22 *Jd.* 106.) These have under their management the most considerable affairs of the nation, and are obliged to a constant attendance on the sovereign; they receive and dispatch whatever comes to their hands, be it for the crown, the church, the army, private grants, pardons, dispensations, &c., as likewise petitions to the crown, which, when read, are returned to

the secretaries for answer; all which they dispatch according to the sovereign's command and direction. Each of them has two under-secretaries, and one or more chief clerks, besides a number of other clerks and officers, wholly depending on them. The secretaries of State have power to commit for treason and other offenses against the State. Some say this power is incident to their office, and others that they derive it in virtue of being named in the commissions of the peace for every county in England and Wales. They have the custody of the signet, and the direction of the signet office and the paper office. Ireland is under the direction of a chief secretary to the lord-lieutenant, who has under him a resident under-secretary. (*Encycl. Lond. See, also, 27 and 28 Vict. c. 34.*)—*Wharton.*

SECRETING OF PROPERTY, (in a statute). 13 Wend. (N. Y.) 399.

SECRETLY, (examination of a witness). 2 Hagg. Cons. 263, 267.

SECTA (from the Latin *sequi*, to follow,) literally means "a following." The word is chiefly used to denote a service, due by custom or prescription, which obliges the inhabitants of a particular place to make use of a mill, oven, kiln or similar structure (*secta ad molendinum, ad furnum, ad torrale, &c.*) In such a case the owner of the mill, oven or kiln may have an action against any inhabitant who "withdraws his suit," *i. e.* goes to another mill, oven or kiln. The theory is that the mill or other structure was erected by the ancestors of the owner for the convenience of the inhabitants, on condition that they should use it to the exclusion of any other. 3 Bl. Com. 235.

§ 2. In the old common law practice, *secta* meant the followers or witnesses whom the plaintiff brought into court with him to prove his case. The actual production of the *sectu* has been disused since the reign of Edward III.; but the declaration in every action contained a fictitious statement on the subject, until comparatively modern times. 3 Bl. Com. 295, 314.

SECTA AD CURIAM.—A writ that lay against him who refused to perform his suit either to the county court or the court-baron.—*Cowell.*

SECTA AD FURNUM.—Suit to a public oven, or bake-house. Abolished.

SECTA AD JUSTICIAM FACIENDAM.—A service which a man is bound to perform by his fee.—*Bract.*

SECTA AD MOLENDINUM.—*See* DE SECTA AD MOLENDINUM.

SECTA AD TORRALE.—Suit to a kiln or malt-house. Abolished.

SECTA CURIÆ.—Suit and service done by tenants at the lord's court.—*Cowell.*

Secta est pugna civilis; sicut actores armantur actionibus, et quasi

gladiis accinguntur ita rei muniuntur exceptionibus et defenduntur quasi clypeis (Hob. 20): A suit is a civil warfare; for as the plaintiffs are armed with actions and as it were girded with swords, so the defendants are fortified with pleas, and are defended as it were by shields.

SECTA FACIENDA PER ILLAM QUÆ HABET ENICIAM PARTEM.—A writ to compel the heir, who has the elder's part of the co-heirs, to perform suit and services for all the coparceners.—*Reg. Orig.* 177.

SECTA NON FACIENDIS.—A writ for a woman, who, for her dower, ought not to perform suit of court.—*Reg. Orig.* 174.

Secta quæ scripto nititur a scripto variari non debet (Jenk. Cent. 65): A suit which is based upon a writing ought not to vary from the writing.

SECTA REGALIS.—A suit so called by which all persons were bound twice in the year to attend in the sheriff's tourn, in order that they might be informed of things relating to the public peace. It was so called because the sheriff's tourn was the king's leet, and it was held in order that the people might be bound by oath to bear true allegiance to the king.—*Cowell.*

SECTA UNICA TANTUM FACIENDA PRO PLURIBUS HÆREDITATIBUS.—A writ for an heir who was distrained by the lord to do more suits than one, that he should be allowed to do one suit only in respect of the land of divers heirs descended to him.—*Cowell.*

SECTARES.—In the civil law, bidders at an auction.

SECTATORES.—Suitors of court who, amongst the Saxons, gave their judgment or verdict in civil suits upon the matter of fact and law. 1 Reeve Hist. Eng. Law 22.

SECTION.—

§ 1. Of land.—The public lands of the United States are divided by surveys into (1) townships (six miles square); (2) sections (six hundred and forty acres). These sections are again subdivided, for sale, into half-sections (three hundred and twenty acres) and quarter-sections (one hundred and sixty acres), and still further into what are called in the statutes "half quarter-sections" and "quarter quarter-sections;" but these last are, in practice, quite as often called "eighties" and "forties" from the number of acres they respectively comprise; or are called "fractions of a section."—*Abbott.*

§ 2. In many treatises, codes and statute books of the law, as well as books upon other scientific

topics, the smaller subdivisions of the text are called "sections." The order of division generally is, books, parts, titles, chapters and sections.

SECULAR.—Not spiritual; relating to affairs of the present world (*in seculo*).

SECULAR CLERGY.—Parochial clergy who perform their ministry *in seculo*; and are contradistinguished from the regular clergy.

SECUNDUM.—According to; following. The first word in some phrases—

Secundum allegata et probata: According to that which is alleged and proved. This maxim means literally according to the pleadings and the evidence; and is a maxim whereby a party recovers in his action only according to his claim as stated and as proved.

SECUNDUM FORMAM STATUTI.—According to the form of the statute.

SECUNDUM LEGEM COMMUNEM.—According to the common law.

Secundum naturam est, commodum cuiusque rei eum sequi, quem sequuntur incommoda (D. 50, 17, 10): It is natural that the advantages of anything should follow him whom the disadvantages follow.

SECUNDUM NORMAM LEGIS.—According to the rule of law; by the rule of law.

SECUNDUM SUBJECTAM MATTERIAM.—With reference to the subject-matter. The meaning of a word or phrase often depends on the subject about which it is used; for instance, the word layman (*q. v.*), if it be used in a conversation concerning the church, means one who is not a clergyman; if it be used in a conversation about the law, it means one who is not a lawyer.—*Wharton.*

SECURED, (in act respecting duties). 1 Paine (U. S.) 518; 12 Wheat. (U. S.) 487.

SECURED CREDITOR.—*See CREDITOR*, § 2 *et seq.*

SECURED DEBT.—*See DEBT*, § 8.

SECURES, (in an agreement for the sale of real estate). 59 Barb. (N. Y.) 38.

SECURING, (in United States constitution). 8 Pet. (U. S.) 591, 660.

SECURITAS.—In old English law, security; surety. In the civil law, an acquittance, or release.—*Spel. Gloss.; Calv. Lex.*

SECURITATEM INVENIENDI, &c.—An ancient writ, lying for the sovereign, against any of his subjects, to stay them from going out of the kingdom to foreign parts; the ground whereof is that every man is bound to

serve and defend the commonwealth as the crown shall think fit.—*F. N. B.* 115.

SECURITATIS PACIS.—A writ that lay for one who was threatened with death or bodily harm by another, against him who so threatened.—*Reg. Orig.* 88.

SECURITIES, (includes stock). 4 Ves. 730.

—— (signature of, to a promissory note). 2 Hill (N. Y.) 663.

—— (in a will). 2 Com. Dig. 659; 8 Id. 475.

SECURITIES FOR MONEY, (in a will). 9 Barn. & C. 267; 10 Bing. 44; 1 Jur. 234; 5 Sim. 451, 455; 6 Id. 115; 1 Sim. & S. 500; 1 Chit. Gen. Pr. 355; 2 Id. 31 app.

SECURITIES, REAL, (defined). 3 Atk. 808.

—— (in a will). Love. Wills 254.

SECURITIES, REAL OR PERSONAL, (power to lend money upon). Coop. Ch. Cas. 33.

SECURITY.—

§ 1. A security is something which makes the enjoyment or enforcement of a right more secure or certain.

With reference to its nature, a security is either a personal security; or a security on property, (called in jurisprudence a "real security;" as to the ordinary meaning of real security, see § 4, *infra*;) or a judicial security.

§ 2. **Personal.**—A personal security consists in a promise or obligation by the debtor or another person, in addition to the original liability or obligation intended to be secured. Sometimes the security consists of an instrument which facilitates the enforcement of the original obligation or extends its duration, as in the case of a bond, bill of exchange, promissory note, &c., given by a debtor for an existing debt, the liability on such instruments being easy of proof. When the security consists of a promise or obligation entered into by a third person, it generally takes the form of a guaranty (*q. v.*), bond, promissory note, or the like. See **SURETY**.

§ 3. **Security on property.**—A security on property is where a right over property exists, by virtue of which the enforcement of a liability or promise is facilitated or made more certain. This is of two kinds, active and passive.

§ 4. **Active.**—An active security is where the creditor (or promisee) has the right of selling the property for the purpose of satisfying his claim, as in the case of a pledge or a mortgage with a power of sale. A mortgage of a freehold interest in

land is sometimes called "real security," as opposed to a security on leaseholds or other personalty. *Jones v Chennell*, 8 Ch. D. 492; *In re Boyd's Settled Estates*, 14 Ch. D. 626. See **INVESTMENT**.

§ 5. **Passive.**—A passive security is where the creditor has the right of keeping the property until his claim is satisfied, but not of selling it; such are possessory liens. Mr. Justice Markby (*Elements of Law*, §§ 501, 510, 534,) makes a distinction between a real security and a security consisting of a *jus in re*, the former being defined as "the means of getting satisfaction out of a specific thing, independently of the will or ability of the debtor," the essence of it being the power of sale, while the latter seems to be a mere possessory lien. We cannot find any authority for this use of the term "real security." It is true that Kuntze (*Cursus*, § 549) draws a distinction between a security which operates as an inducement to the debtor to perform his obligation and one which enables the creditor to satisfy the debt independently; but he calls the latter "*eine unabhängige sachliche Gewähr*," in order to distinguish it. § 556.

§ 6. Between these two classes stand certain rights which entitle the holder to take proceedings to have the property dealt with so as to satisfy his claim; such are charges in the restricted sense of that word. See **CHARGE**, § 2; **HYPOTHECATION**, § 2.

§ 7. The important characteristic of a security on property is that in the event of the debtor being bankrupt, absconding or dying, the right can nevertheless be enforced by means of the property. See **CREDITOR**, § 2 *et seq.*

§ 8. **Specific.**—Securities on property are also either specific or shifting. Thus, an ordinary mortgage on land is a security on specific property; the mortgagor can only deal with the land subject to the mortgage, and the mortgagee does not by his mortgage acquire any right to other property belonging to the mortgagor (except in the anomalous case of consolidation (*q. v.*)).

§ 9. **Shifting, or floating.**—A shifting or floating security, on the other hand, is a security on all property which shall come under a certain description at the time

when the rights of the parties have to be ascertained. Thus, a mortgage or bill of sale on fixtures, machinery or the like, in a given building, may be so framed as to cover articles of a like description placed in the building after the date of the security, with or without a clause empowering the mortgagor to take away any articles and replace them by others of equal value. (*Holroyd v. Marshall*, 10 H. L. Cas. 191; *Fish. Mort. 25 et seq.*; *In re Colonial Trusts Corporation*, 15 Ch. D. 469.) So a debenture may form a charge on the property for the time being of a company, including stock in trade, book debts, &c.; so that it may sell its stock in trade and buy new stock in trade, receive book debts and create new ones in such a way that, when the time comes for enforcing the security, the property then subject to it may be quite different from what it was when the security was given. As soon as proceedings are taken which necessitate an enforcement of the security (*e. g.* if the company goes into liquidation), the security becomes fixed, and no further change is possible. *See In re Panama, &c.*, Co., L. R. 5 Ch. App. 318.

§ 10. **Judicial.**—A judicial security exists where a right is enforceable by means of the powers vested in a court of law. Thus, a judgment is enforceable by execution against the property, and (in some cases) against the person of the defendant; and, therefore, a judgment creditor who has taken the proper steps to enforce his judgment is a secured creditor. (*See CREDITOR*, § 2; *JUDGMENT*, § 16.) To this class may also be referred cognovits, warrants of attorney, garnishee orders, stop orders, charging orders, distringas notices (*see the various titles*).

§ 11. **Agreement of parties, or operation of law.**—With reference to its origin, a security is either created by agreement of the parties or by operation of law; a mortgage or bond is an instance of the former class—a retaining lien of the latter.

§ 12. With reference to the purpose for which they were created, securities may be divided into (1) ordinary securities, namely, those created to secure the payment of a debt or the performance of an obligation between private persons; and (2) securities given in legal proceedings. Securities

given in legal proceedings are of various kinds:

§ 13. In ordinary actions, security is in some cases required to be given to secure a right in question in the litigation: to this class belong stop orders, distringas, attachments of debts, payment of money and transfer of stock into court, deposit of property in court, &c. *See BAIL*, p. 105 *n.*; *JUDGMENT*, § 9.

§ 14. In criminal and summary proceedings the defendant or prisoner is sometimes allowed to go at large on giving bail or entering into his own recognizance, instead of being detained in custody. (*See BAIL*, § 6.) A person may also be required to give security to keep the peace. *See ARTICLES OF THE PEACE; BREACH OF THE PEACE; RECOGNIZANCE*, § 4.

§ 15. **Security for costs.**—Security is sometimes required to be given in relation to the proceedings themselves. Thus, in an ordinary action the plaintiff may, in certain cases (as where he permanently resides out of the jurisdiction of the court), be compelled to give to the defendant security for the costs of the action, (*Sm. Ac. 99; Coe Pr. 129; Dan. Ch. Pr. c. ii., § 4.*) generally either by entering into a bond with sureties, or by paying money into court. An appellant may also be required to give security for the costs of the appeal, *e. g.* if he appears to be insolvent. (*Wilson v. Smith*, 2 Ch. D. 67; *Grant v. Banque Franco-Egyptienne*, 2 C. P. D. 430.) As to security on removing causes from inferior courts, *see REMOVAL*, §§ 3, 4. In criminal and summary proceedings the complainant or prosecutor is generally required to enter into a recognizance, by which he binds himself to prosecute the proceedings.

§ 16. In a secondary sense, "security" denotes an instrument by which a security is created or evidenced, such as a bond, bill of exchange, debenture, scrip, &c.

SECURITY, (defined). 3 N. Y. Leg. Obs. 367, 370.

_____ (equivalent to "pledge"). 2 Day (Conn.) 227, 230.

_____ (in what, trustees may invest trust funds). 8 Madd. 295; 3 Swanst. 63, 87 *n.*

_____ (approbation of, is not necessary). 14 Mass. 167.

_____ (when must be by recognizance). 7 Johns. (N. Y.) 19.

SECURITY, (in an agreement). 3 Blackf. (Ind.) 431.

— (in bankrupt act.) 2 Sandf. (N. Y.) Ch. 494, 506.

— (in a statute). 31 Conn. 139.

— (in suit by non-resident plaintiff). 12 Johns. (N. Y.) 423.

SECURITY, DUE, (for money loaned by a trustee, what is). 4 Johns. (N. Y.) Ch. 281.

SECURITY FOR COSTS.—See SECURITY, § 15.

SECURITY FOR GOOD BEHAVIOR.—See ARTICLES OF THE PEACE; BREACH OF THE PEACE; RECOGNIZANCE, § 4; SECURITY, § 14.

SECURITY FOR MONEY, (a promissory note is not). 3 Swanst. 80 n.

SECURITY, PERSONAL, (executors are not to permit money to remain on). 5 Ves. 844.

SECURITY TO YOU, I AGREE TO BE, (in a guaranty). 6 Bing. 201.

Securius expediuntur negotia commissa pluribus, et plus vident oculi quam oculus (4 Co. 46 a): Matters entrusted to several are more securely dispatched, and eyes see more than eye, i. e. "two heads are better than one."

SECUS.—Otherwise.

SED NON ALLOCATUR.—But it is not allowed. A phrase used in the old reports, to signify that the court disagreed with the arguments of counsel. "It was argued," &c. "It was insisted," &c.; "*sed non allocatur.*"

SED PER CURIAM.—But by the court. An expression sometimes found in the reports, after the opinion of a single judge, to introduce that of the court which differs from that of the single judge.

SEDE PLENA.—When a bishop's see is not vacant.

SEDERUNT, ACTS OF.—See ACTS OF SEDERUNT.

SEGE FLAT, (defined). 34 Conn. 424.

SEDITION—SEDITIONOUS.—

§ 1. In English law, sedition is the offense of publishing, verbally or otherwise, any words or document with the intention of exciting disaffection, hatred, or contempt against the sovereign, or the government and constitution of the kingdom, or either house of parliament, or the administration of justice, or of exciting her majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in church or state, or of exciting feelings of ill-will and hostility between different classes of her majesty's subjects.

§ 2. If the matter so published consists of words spoken the offense is called "the speak-

ing of seditious words." If it is contained in a document or the like, the offense is called "a seditious libel."

§ 3. CONSPIRACY.—A seditious conspiracy is where two or more persons agree to do an act for the furtherance of any seditious intention.

All these offenses are misdemeanors. Steph. Cr. Dig. 55; Shortt Copyr. 324. See, also, Stat. 6 Anne c. 7 (c. 41 in the Statutes of the Realm), which makes it high treason to impugn, by writing or printing, the Act of Settlement.

SEDUCE, (in a statute). 27 Conn. 319.

SEDUCED, (does not imply a criminal offense). 108 Mass. 488, 492.

SEDUCING TO LEAVE SERVICE.

—An injury for which a master may have an action on the case.

SEDUCTION is where a man induces a woman to have connection with him by taking advantage of her affection for him, or by promising her marriage, or by some similar means. On the principle that *volenti non fit injuria*, seduction is no actionable wrong to the woman herself, but it is a wrong to her parent or master if it causes him a loss of service (see SERVICE, § 7), and in an action by a parent the jury may give exemplary damages. (3 Steph. Com. 441; Underh. Torts 152. See DAMAGES, § 4.) In some of the States, seduction of a woman of previous chastity, is a criminal offense.

SEDUCTION, (defined). 3 Crim. L. Mag. 332.

— (what is). 11 Mich. 278; 6 Robt. (N. Y.) 138, 150.

SEE.—The diocese of a bishop.

SEE PRIZES INTO PORT, (in a policy of insurance). 1 Campb. 263.

SEE ONE PAID, PROMISE TO, (distinguished from "a promise to pay"). 1 Ld. Raym 224.

SEE THEM PAID, (in a letter). Holt 153.

SEE YOU PAID, (parol promise to). 2 T. R. 81.

SEE YOU PAID, I WILL, (equivalent to "I will pay you"). 9 Barn. & C. 73.

SEEN, (endorsed by a drawee on a bill of exchange). 2 Hill (N. Y.) 582; 1 Bouv. Inst. 460.

SEIGNIOR, or SEIGNEUR.—In its most general signification means a lord; but in law it is particularly applied to the lord of a manor; and the manor is thence termed a "seignior," i. e. a lordship (Kitchin 206).—Cowell. See SEIGNORY.

SEIGNIOR IN GROSS.—A lord without a manor, simply enjoying superiority and services.

SEIGNIORAGE.—A royalty or prerogative of the crown, whereby an allowance of gold

and silver, brought in the mass to be exchanged for coin, is claimed.

SEIGNIORESS.—A female superior.

SEIGNORY.—NORMAN-FRENCH: *seignur*; from Latin, *senior*.

§ 1. A seignory is the relation of a feudal lord to his tenant, and to the land held by him. Thus, if before the Statute of Quia Emptores, A., a tenant in fee-simple, conveyed his land to B. to hold of A. as his tenant, then A.'s rights against B. in respect of services, fealty, &c., and his interest in the land in the event of an escheat or forfeiture by B. or his successors in title, would constitute a seignory. Since the Statute of Quia Emptores no seignory can be created. Owing to the feudal incidents of tenure (fealty, &c.) having now become obsolete, and to the rent services anciently reserved having become almost valueless, seignories in freehold land are seldom of any practical importance: in most cases indeed they cannot be traced. (See MORTMAIN, § 1.) Consequently almost the only seignories now in existence are those of lords of manors, for a manor does not exist unless there are at least two free tenants. *i. e.* tenants of freehold land forming part of the manor who hold of the lord by a service of some kind. (Wms. Seis. 9, 13; Warrick v. Queen's College, L. R. 6 Ch. 716.) Hence a manor is sometimes said to consist of demesnes and seignories. Burt. Com. p. 326; and see Britt. 106 a.

§ 2. A seignory is sometimes distinguished by the services incident to it, *e. g.* a seignory by fealty and rent-service; (Bevill's Case, 4 Co. 8a;) or by the position of the lord, *e. g.* seignories paramount and mesne seignories. (See MESNE; PARAMOUNT.) A seignory may also be either appendant, *i. e.* attached to a manor; or in gross, when it has been severed from the manor to which it originally belonged. On the conveyance of a manor the seignories appendant to it pass with it; a seignory in gross must be conveyed by a deed of grant, a seignory being an incorporeal hereditament. (Wms. Real Prop. 307, 314.) Originally a seignory differed little from a reversion, as is shown by the manner in which escheated lands descend. See ESCHIEAT, § 3; Burt. Comp. 326.

§ 3. Seignory sometimes means the land or district over which the rights of the lord extend. Compare FRANCHISE, § 4; LIBERTY, § 2.

SEISED, (imports, of a fee). 2 Cai. (N. Y.) 385.

— (an action on covenant). 2 Root (Conn.) 14.

— (in a statute). 3 N. Y. 294; 12 R. I. 560, 569; 2 Bro. Ch. C. 270.

— (in a will). 6 Ch. D. 496.

— (administrators are liable upon a covenant that they are). 8 Mass. 162.

SEISED, COVENANT TO STAND, (what is). 12 Mass. 96.

SEISED IN DEMESNE AS OF FEE.—See DEMESNE, §§ 2, 3; SEISIN, § 5.

SEISED IN FEE, (defined). 12 East 270.

— (in a covenant). Cro. Jac. 369.

SEISED, LAWFULLY, (in a covenant). 4 Mau. & Sel. 53.

SEISED TO HIS USE, (in statute of uses). 3 Hart. (N. J.) 402.

SEISIN.—The most probable derivation is from the old German word *bisazjan*; ANGLO-SAXON: *bisettan*, to take possession of; modern ENGLISH: *beset*. Hence the old FRENCH: *saisir* (Diez Etym. Wortb s r. Fagire); late LATIN: *sacire* or *saisire*, to take possession of land ("Qui . . . terram allertus *saisibat*," extract from Domesday Book in Stubbs's Charters 81); NORMAN-FRENCH: *seisine*, possession of land. (Britt. 101 b.) The late Latin *saisiare* seems to be a still later formation, made when *saisir* had acquired the popular meaning of *seize*. It is apparently only applied to movables. See the extracts in Stubbs 188, 166.

§ 1. Seisin is feudal possession; in other words, it is the relation in which a person stands to land or other hereditaments, when he has in them an estate of freehold in possession; (Wms. Seis. 2; Butler's note to Co. Litt. 266 b;) such a person is said to be seised of the land. "Seisin" is opposed (1) to "possession," which, in its technical sense, is only applied to leaseholds and other personal property;* and (2) to "occupation," which signifies actual possession. See OCCUPATION; POSSESSION, § 17.

With reference to its nature, seisin is either actual [in deed] or in law.

§ 2. **In deed.**—Actual seisin, or seisin in deed, is where the freeholder is himself in possession or occupation of the land, or where it is occupied by a person claiming under him, and not having an estate of freehold in the land, *e. g.* a lessee for years. Co. Litt. 15a.

§ 3. **In law.**—Seisin in law is that seisin which an heir has when his ancestor dies intestate seised of land, and neither the heir nor any other person has taken actual possession of the land. Thus, if a man has two farms, Blackacre and Whiteacre, the former of which he lets to a tenant for years, and the latter he occupies himself, then, on his death intestate, his heir has actual seisin of Blackacre from the mo-

*Co. Litt. 17 a, 200 b. It is true that Littleton (§ 567) speaks of a tenant for years being seised, but this seems to be with reference to the effect of a grant of the reversion without livery of seisin, for in § 324 he says that "where one will plead a lease or grant made to him of a

chattel real or personal, then he shall say by force of which he was possessed, &c." See a similar use of the word in Britton 102 b. However, there is no doubt that at one time seisin and possession were convertible terms. Co. Litt. 17 a.

ment of his death, because the possession of the tenant is looked upon as the possession of the freeholder; but of Whiteacre the heir has merely a seisin in law until he enters and takes possession, and then he has actual seisin of Whiteacre too. (Wms. Seis. 5.) The term "seisin in law" is sometimes applied to the interest of a reversioner or remainderman expectant on an estate of freehold, but inaccurately, because the seisin is in the tenant of the estate of freehold. Watk. Desc. 35.

§ 4. Actual seisin of incorporeal hereditaments is obtained by exercising the rights of which they consist, *e. g.* receiving a rent charge or presenting to an advowson. Litt. §§ 235, 565; Co. Litt. 11b, 15b, 315a; Bevil's Case, 4 Co. 8.

§ 5. With reference to the nature of the property, a tenant in fee-simple is said to be seised in his demesne as of fee "of such things whereof a man may have a manuell occupation, possession or receipt, as of lands, tenements, rents and such like. . . . But of such things which do not lie in such manuell occupation, &c., as of an advowson of a church and such like, there he shall say that he was seised as of fee and not in his demesne as of fee." (Litt. § 10.) The distinction was only of importance under the common law system of pleading. See DEMESNE, § 3.

§ 6. Since the abolition of the rules as to descent cast and "*seisina facit stipitem*" (*q. v.*), and the introduction of modern forms of conveyance, which do not require livery of seisin (*q. v.*), the doctrine of seisin has lost almost all its importance. (See, however, *Leach v. Jay*, 6 Ch. D. 496; 9 Ch. D. 42.) Under the old law, when an heir obtained seisin of land on the death of his ancestor, and then himself died intestate, the land went to his heirs and not to the heirs of his ancestor. This was called a "mesne seisin," because it was intermediate between the two deaths, and the heir was called a "mesne heir," or "mesne person." (Watk. Desc. 35; and see POSSESSIO FRATRIS.) Another kind of seisin is the "simple seisin" spoken of by Britton (178b), namely, that nominal or formal possession which a lord was entitled to take on the death of a tenant in fee-simple, in order to assert his right of seignory, as opposed to the full or bene-

ficial seisin of the tenant's heir. This has long been obsolete.

§ 7. **Quasi-seisin.**—*Quasi-seisin* is the possession which a copyholder has of the land to which he has been admitted. The freehold in copyhold lands being in the lord, the copyholder cannot have seisin of them in the proper sense of the word, but he has a customary, or *quasi-seisin*, analogous to that of a freeholder. Wms. Seis. 126.

§ 8. **Equitable seisin.**—Equitable seisin is analogous to legal seisin, *i. e.* it is seisin of an equitable estate in land. Thus, a mortgagor is said to have equitable seisin of the land by receipt of the rents. (*Choniley v. Clinton*, 2 Meriv. 171; 2 Jac. & W. 190.) "Actual possession clothed with the receipt of the rents and profits, is the highest instance of an equitable seisin." *Casborne v. Scarfe*, 1 Atk. 603. See DISSEISIN; POSSESSION.

SEISIN, (defined). 49 Ala. 601, 604; 4 Bush (Ky.) 613; 2 J. J. Marsh. (Ky.) 430; 1 Burr. 107; 7 Com. Dig. 321; Co. Litt. 17a, 153a.

— (what is evidence of). 5 Cow. (N. Y.) 299; 7 Id. 353; 2 Hill (N. Y.) 341; 2 Johns. (N. Y.) 119.

— (in pleading). 9 Cow. (N. Y.) 560.

— (covenant of). 5 Day (Conn.) 419.

— (what is not a covenant of). 3 Pa. 423.

— (when sufficient to entitle the widow to dower). 7 Mass. 253.

— (by the husband, when will support a claim to dower). 7 Halst. (N. J.) 22.

— (of husband to give wife dower). 13 Vr. (N. J.) 7.

— (in settlement act). 3 Halst. (N. J.) 319; 7 Cow. (N. Y.) 244.

— (not bounded by actual occupancy). 8 Cranch (U. S.) 250; 5 Pet. (U. S.) 354.

— (damages recoverable in an action for a breach of covenant of). 2 Harr. (N. J.) 309.

— (when sufficient to support an action for possession). 9 Mass. 101.

— (when will sustain partition proceedings). 14 Mass. 437.

SEISIN, COVENANT OF, (effect of). 5 Wheel. Am. C. L. 99; 11 Johns. (N. Y.) 122.

— (in a mortgage deed). 4 Wheel. Am. C. L. 41.

— (may be broken without eviction). 4 Dall. (U. S.) 430.

— (what is a breach of). 4 Cranch (U. S.) 421; 15 Johns. (N. Y.) 550; 12 Wend. (N. Y.) 83; 13 Id. 300.

— (what is not a breach of). 4 Mass. 403; 16 Johns. (N. Y.) 254.

— (pleading in action upon). 9 Wend. (N. Y.) 416.

— (damages recoverable in an action for breach of). 2 Mass. 433; 4 Id. 103; 8 Id. 243.

SEISIN IN DEED, (defined). 4 Kent Com. 386 n. (a).

SEISIN IN FACT, (distinguished from seisin in law). 7 Com. Dig. 321.

SEISIN IN A FREEHOLD ESTATE, (when suffi-

cient to give a right of settlement under statute, 1789, c. 14). 4 Mass. 384.

SEISIN, LIVERY OF.—Delivery of possession, called by the Feudists "investiture."

SEISIN, LIVERY OF, (what is). 2 Bl. Com. 311.

SEISIN OX.—In the Scotch law, a perquisite formerly due to the sheriff when he gave possession to an heir holding crown lands. It was long since converted into a payment in money, proportioned to the value of the estate. —*Bell Dict.*

SEISINA FACIT STIPITEM in the law of descent means "seisin makes the stock of descent." The old rule used to be that when a person died intestate as to his land, it descended to the heir of the person who was last seised of it. Now descent is traced from the last purchaser. Wms. Real. Prop. 101. See DESCENT.

SEISINA HABENDA, &c.—A writ for delivery of seisin to the lord, of lands and tenements, after the sovereign, in right of his prerogative, had had the year, day, and waste, on a felony committed, &c.—*Reg. Orig.* 165.

SEIZURE.—

§ 1. In the law of copyholds, seizure is where the lord of copyhold lands takes possession of them in default of a tenant. It is either seizure *quousque* or absolute seizure.

§ 2. **Seizure quousque.**—When a copyhold tenant dies intestate, his heir is bound to come to the lord for admittance within a certain time, and pay the fine on admittance; if he does not appear, the lord may seize the land *quousque* (i. e. "until" he does appear), and enjoy the rents and profits in the meantime. Seizure *quousque* is rather in the nature of a process for recovering the fine than in the nature of a forfeiture, but in some manors there are customs that, after neglect or refusal to appear within a certain time, the land shall be absolutely forfeited. *Elt. Copyh.* 140; *Doe v. Trueman*, 1 Bann. & Ald. 736.

§ 3. **Absolute seizure.**—Where the lord seizes land for a forfeiture, escheat, &c., this is an absolute seizure. See *Doe v. Hellier*, 3 T. R. 162.

§ 4. **Heriots.**—The lord may also take heriots by seizure, and the same remedy is given for things which lie in franchise, as waifs, wreck, estrays, &c. 3 Steph. Com. 258.

§ 5. **Execution by seizure.**—In the law of procedure, seizure is sometimes a species of execution. Thus, a sheriff executes a writ of *fi. fa.* by taking possession of the chattels of the debtor. See *Bissicks v. Bath Colliery Co.*, 3 Ex. D. 174. See, also, *Fieri Facias*.

§ 6. Seizure also takes place when goods are confiscated as a punishment for smuggling or carrying contraband of war.

SEIZURE, (defined). 9 Wall. (U. S.) 103. (what constitutes). 1 Sprague (U. S.) 551; 10 Wheat. (U. S.) 312. (in a policy of insurance). 5 Har. & J. (Md.) 139; 9 Allen (Mass.) 219, 221, 222.

SEIZURE OF GOODS FOR OFFENSES.—No goods of a felon or other offender can be taken to the use of the crown before they are forfeited. There are two kinds of seizure: (1) *Verbal*, to take an inventory, and charge the town or place where the owner is indicted for the offense; and (2) *Actual*, which is taking them away after conviction. (3 Inst. 103.) Forfeiture for treason or felony has now been abolished by 33 and 34 Vict. c. 23.—*Wharton*.

SEL denotes the bigness of a thing to which it is added, as *Selwood*, a big wood.

SELDA.—A shop, shed, or stall in a market; a wood of willows or willows; also a saw pit. *Co. Litt.* 4.

SELDEN.—John Selden was born in 1584, and died in 1654. He wrote *Mare Clausum*; *Dissertatio historica ad Fletam*; *Notes on Fortescue*; and numerous other works on tithes, titles of honor, &c.

SELECT COMMITTEE.—See COMMITTEE, § 2.

SELECTED, (synonymous with "chosen"). 1 Neb. 365, 369.

SELECTIONS JUDICES.—Roman judges returned by the prætor, drawn by lot, and subject to be challenged and sworn like our juries. 1 Bl. Com. 366.

SELECTMEN.—Town officers in several of the States, invested by statute with extensive executive powers in relation to the town business.

SELF-DEFENSE.—See DEFENSE, § 1: HOMICIDE, § 3.

SELF-DEFENSE, (when an excuse for homicide). *Coxe* (N. J.) 424.

SELF-MURDER, or SELF-SLAUGHTER.—See FELONY DE SE; SUICIDE.

SELF-REGARDING EVIDENCE.—Evidence which either serves or dis-serves the party is so called. This species of evidence is either self-serving (which is not in general receivable) or self-disserving,

which is invariably receivable, as being an admission against the party offering it, and that either in court or out of court.—*Brown*.

SELION OF LAND.—A ridge of ground rising between two furrows, containing no certain quantity, but sometimes more and sometimes less.—*Termes de la Ley*.

SELION OF LAND, (defined). Co. Litt. 5b.

SELL, (defined). 44 Vt. 529, 533.

— (distinguished from "barter"). 5 Heikk. (Tenn.) 555.

— (in a treaty between the United States and the Chickasaw Indians). 1 How. (Miss.) 552.

— (factor may pawn goods intrusted to him to). 2 Mass. 398.

— (authority to). 2 Hill (N. Y.) 160.

— (what is not an authority to). 3 Mass. 211.

— (in an agreement). 25 Md. 424.

— (agreement to, does not amount to a license to enter). 7 Cow. (N. Y.) 229; 9 Johns. (N. Y.) 331.

— (contract to, when may be rescinded). 12 Johns. (N. Y.) 190.

— (covenant to, what is not a fulfillment). 12 Me. 460.

— (power to, what is good execution of). 2 Ves. 98.

— (power to, does not give power to warrant the thing sold). 7 Johns. (N. Y.) 390.

— (power to, includes an authority to transfer negotiable securities). 26 Ala. 619.

— (power to, in a mortgage deed is a power coupled with an interest). 1 Cal. (N. Y.) Cas. 1.

— (power to, in a will). 2 Litt. (Ky.) 115; 7 Cow. (N. Y.) 193; 1 Hill (N. Y.) 111;

2 *Id.* 569; 6 Johns. (N. Y.) 73; 14 *Id.* 527; 2 Johns. (N. Y.) Ch. 1; 4 Paige (N. Y.) 328; 2

Wend. (N. Y.) 1; 12 *Id.* 602; 15 *Id.* 610; 1 Ohio 232; 3 Car. & P. 352; 2 Sim. & S. 241; 1

Ves. 366; 2 *Id.* 590; 8 *Id.* 556; 2 Prest. Est. 83.

SELL AND CONVEY, (in a deed). 1 Serg. & R. (Pa.) 50.

SELL AND DISPOSE OF, (in a will). 3 Day (Conn.) 384, 388; Boyl. Char. 307.

SELL AND EXCHANGE, (power to). Turn. & R. 81.

SELL ESTATES, (power to). Sugd. Vend. & P. 495.

SELL LAND, (power to). 1 J. J. Marsh. (Ky.) 288.

— (agreement to, binds the party to execute a proper deed of conveyance). 9 Me. 128.

SELL ON CREDIT, (when an agent may). 6 Johns. (N. Y.) 69.

SELL REAL ESTATE, (prohibition to, does not imply prohibition to mortgage). 31 Iowa 547.

SELLER.—One who disposes of property by sale (*q. v.*); a vendor.

SEMAVNE'S CASE.—This case decided, in 2 Jac. I., that "every man's house (meaning his dwelling-house only) is his castle," and that the defendant may not break open outer

doors in general but only inner doors, but that (after request made) he may break open even outer doors to find goods of another wrongfully in the house.—*Brown*.

SEMBLE.—It appears; it seems. Used in the reports in quoting a *dictum* (*q. v.*), or a case which only indirectly bears on a point.

SEMESTRIA.—In the civil law, the collected decisions of the emperors in their councils.

SEMI-ANNUALLY, (interest payable, is not usurious). 5 Paige (N. Y.) 98.

SEMI-COLON, (defined). 6 Abb. (N. Y.) N. Cas. 181, 188.

SEMI-MATRIMONIUM.—Half-marriage. Concubinage was so called in the Roman law. Tayl. Civ. L. 273.

SEMINARIUM.—A nursery of young trees. D. 47, 7, 3, 4.

SEMINARY OF LEARNING, (in tax act). 5 N. Y. 376; 13 *Id.* 220.

SEMINAUFRAGIUM.—Half shipwreck, as where goods are cast overboard in a storm; also, where a ship has been so much damaged that her repair costs more than her worth.

SEMI-PLENA PROBATIO.—A semi-proof; the testimony of one person, upon which the civilians would not allow any sentence to be founded. See **PLENA PROBATIO**.

SEMITA.—A path. Fleta l. 2, c. 52, § 20.

SEMPER.—Always. The initial word of several phrases, among which are—

Semper in dubiis benigniora præferenda: In doubtful matters the more liberal construction is to be preferred.

Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi quum aperte contra leges scriptum est (D. 34, 5, 21): In doubtful cases, such a course should always be taken that a thing contracted *bona fide* should be in the safest condition, unless when it has been openly made against law.

Semper in obscuris, quod minimum est sequimur (D. 50, 17, 9): In obscure constructions we always apply that which is the least obscure. See *per* Maule, J., in *Williams v. Crossling*, 3 Com. B. 962.

Semper in stipulationibus, et in ceteris contractibus, id sequimur quod actum est (D. 50, 17, 34): In stipulations and other contracts, we always follow that which was done.

Semper ita fiat relatio ut valet dispositio (6 Co. 76): Let the reference always be so made that the disposition may avail.

SEMPER PARATUS.—Always ready; always prepared. A phrase frequently found in old pleadings.

Semper præsimitur pro legitimatione puerorum; et filiatio non potest probari (Co. Litt. 126a): The presumption is always in favor of the legitimacy of children, and filiation cannot be proved.

Semper præsimitur pro matrimonio: The presumption is always in favor of the validity of a marriage.

Semper præsimitur pro negante: The presumption is always in favor of the negative. (See 10 Cl. & F. 534.) On an equal division of votes in the House of Lords the question passes in the negative.

Semper præsimitur pro sententia (3 Bulst. 42): Presumption is always for the sentence.

Semper qui non prohibet pro se intervenire, mandare creditur (D. 14, 6, 16): He who does not always prohibit another to intervene in his behalf, is believed to order it.

Semper sexus masculinus etiam femininum sexum continet (D. 32, 62): The masculine sex always includes the feminine.

Semper specialia generalibus insunt (D. 50, 17, 147): Generalities always include specialities.

SEN.—Justice. Co. Litt. 61a.

SENAGE.—Money paid for synodals.

SENATE.—The less numerous branch of the congress of the United States and of the legislatures of the several States. See CONGRESS, § 2.

SENATOR.—In the Roman law, a member of the *senatus* (senate). In which sense it is still used in American law. In Saxon law, an alderman. In old English law, a member of the king's council, or council board; a king's councillor.

SENATORS OF THE COLLEGE OF JUSTICE.—The judges of the Court of Session in Scotland are so called. Act 1540, c. 93.

SENATUS.—In the Roman law, the senate. Also, the place where the senate met.—*Culv. Lex.*

SENATUS CONSULTA.—Ordinances of the senate. Public acts among the Romans,

which regarded the whole community. Sand. Inst. (5 edit.) xxiv, 9.

SENATUS DECRETA.—Decisions of the senate. Private acts, which concerned particular persons or personal matters.

SENE SCHAL.—A steward; also one who has the dispensing of justice. Co. Litt. 61a; Kit. 13; Cro. Jurisd. 102.

SENE SCHALLO ET MARESHALLO QUOD NON TENEAT PLACITA DE LIBERO TENEMENTO.—A writ addressed to the steward and marshal of England, inhibiting them to take cognizance of an action in their court that concerns freehold.—*Reg. Orig.* 185. Abolished.

SENEUCIA.—Widowhood.—*Cowell.*

SENEY-DAYS.—Play-days, or times of pleasure and diversion.—*Cowell.*

SENILITY.—Incapacity to contract arising from the impairment of the intellectual faculties by old age.

SENIOR.—(1) Lord; a lord. (2) The elder. An addition to the name of the elder of two persons having the same name, the better to distinguish them, *e. g.* Vesey, Sr.; Vesey, Jr. See JUNIOR.

SENIOR, (is no part of the name). 8 Conn. 289, 293; 4 Wheel. Am. C. L. 280.

SENIOR DEPUTY SHERIFF IN SERVICE, (in a statute). 126 Mass. 603.

SENIORES.—Seniors; ancients; elders. A term applied to the great men of the realm.—*Spel. Gloss.*

SENSU HONESTO.—To interpret words *sensu honesto* is to take them so as not to impute impropriety to the persons concerned.

Sensus verborum est anima legis (5 Co. 2): The meaning of the words is the spirit of the law.

Sensus verborum est duplex, mitis et asper et verba semper accipienda sunt in mitiore sensu (4 Co. 13): The meaning of words is two-fold, mild and harsh; and words are to be received in their milder sense.

Sensus verborum ex causa dicendi accipiendus est; et sermones semper accipiendi sunt—secundum subjectam materiam (4 Co. 14): The sense of words is to be judged of with reference to the cause of their being spoken; and discourses are always to be interpreted according to the subject-matter.

SENTENCE.—

§ 1. Ecclesiastical.—In ecclesiastical procedure, sentence is analogous to judgment (*q. v.*)

in an ordinary action. A definite sentence is one which puts an end to the suit, and regards the principal matter in question. An interlocutory sentence determines only some incidental matter in the proceedings. Phillim. Ecc. L. 1260.

§ 2. Criminal.—“Sentence” is commonly used to signify the judgment in a criminal proceeding. See JUDGMENT, § 23; see, also, DECREE, § 4.

SENTENCE, (defined). 109 Mass. 325 *et seq.*; 2 Swanst. 299 *n.*

(is not a part of a conviction). 68 Me. 202.

SENTENCE OF DEATH RECORDED.—This being entered on the record (Stat. Geo. IV. ch. 48), has the same effect as if it had been pronounced and the offender reprieved. It is now disused.—Wharton.

SENTENTIA.—In the civil law, (1) sense; import; as distinguished from mere words. (2) The deliberate expression of one's will or intention. (3) The sentence of a judge or court.

Sententia a non iudice lata nemini debet nocere: A sentence passed by one who is not a judge ought to harm no one.

Sententia contra matrimonium nuncquam transit in rem judicatam (7 Co. 43): A sentence against marriage never becomes a matter finally adjudged, *i. e. res judicata*.

Sententia facit jus, et legis interpretatio legis vim obtinet (Ellesm. Postn. 55): Judgment creates right, and the interpretation of the law has the force of law.

Sententia facit jus, et res judicata pro veritate accipitur (Ellesm. Postn. 55): Judgment creates right, and what is adjudicated is taken for truth.

Sententia interlocutoria revocari potest, definitiva non potest (Bac. Max. 20): An interlocutory judgment may be recalled, but not a final.

Sententia non fertur de rebus non liquidis et oportet quod certa res deducatur in iudicium (Jenk. Cent. 7): Judgment is not given on things not liquidated; and things ought to be certain which are brought into court.

SEPARALITER.—Separately. Used in indictments to indicate that two or more defendants were charged separately and not jointly with the commission of the offense in question.

SEPARATE DEMISE IN EJECTMENT.—A demise in a declaration in ejectment used to be termed a separate demise when made by the lessor separately or individually, as

distinguished from a demise made jointly by two or more persons, which was termed a “joint demise.” No such demise, either separate or joint, is now necessary in this action.—Brown. See EJECTMENT.

SEPARATE ESTATE—SEPARATE USE.—

§ 1. Separate estate, or property belonging to a married woman to her separate use, is property which belongs to her as if she were a *feme sole*. The doctrine of separate estate, which was formerly recognized only in equity, may be described generally as giving a married woman the power of acting with respect to her separate property as if she were a *feme sole*; thus, she is, in most jurisdictions at the present day, entitled to the income of it, and may dispose of it by deed or will, and mortgage or charge it without the concurrence or consent of her husband, unless she is restrained from anticipation or alienation. (See ANTICIPATION, § 1; RESTRAINT ON ALIENATION.) Her separate estate is liable for all engagements contracted by her with reference to and on the credit of it. *Hulme v. Tenant*, 1 Bro. C. C. 16; *Tullett v. Armstrong*, 1 Beav. 1; *Shattock v. Shattock*, L. R. 2 Eq. 182; 1 White & T. Lead. Cas. 521; *Poll. Cont.* 62; *Macq. Husb. & W.* 316; *Maine Hist. Inst.*; *Haynes Eq.* 200; *Snel. Eq.* 278; *London Chartered Bank of Australia v. Lempriere*, L. R. 4 P. C. 572; *In re Harvey's Estate*, 13 Ch. D. 216; *Matthewman's Case*, L. R. 3 Eq. 781. See ENGAGEMENT, § 2.

§ 2. Property may become the separate estate of a married woman either by provision of the party or under a statute. It may be settled upon her, or devised, bequeathed or otherwise given to her to her separate use, whether by a stranger or by her husband, and whether it is given to trustees for her or not, and whether it is given to her absolutely or subject only to a power of appointment by her. Where the legal estate in the property is vested in the husband, he is a trustee for her. Property becomes the separate estate of a married woman by statute (1) under the various Married Women's Property Acts; (2) under a decree of judicial separation (*q. v.*); (3) under a protection order (*q. v.*); or (4) under a separation order (*q. v.*)

§ 3. Where property is given to a mar-

ried woman to her separate use absolutely (*i. e.* without a limitation over after her death), and she dies without having disposed of it, her husband takes it *jure mariti*, (*see* *JUS MARITI*, § 2,) according to English law, but her heirs-at-law would take under such circumstances in most of the States, subject in case of realty to the husband's curtesy. As to the separate estate of partners, *see* *JOINT*, § 7; *see, also*, *MARRIED WOMEN'S PROPERTY ACTS*; *PROTECTION*; *COVERTURE*; *ENGAGEMENT*, § 2; *USE*.

SEPARATE ESTATE, (as applied to partnership in bankrupt law, defined). 11 Bankr. Reg. 221. — (of married woman, defined). 24 Pa. St. 429.

— (of married woman who becomes discovert). 3 Whart. (Pa.) 62.

— (power of married woman over). 5 Paige (N. Y.) 581; 2 Whart. (Pa.) 11; 3 *Id.* 48; 3 Deaus. (S. C.) 447; 8 Wheel. Am. C. L. 299. — (in a statute). 30 Ala. 642; 41 *Id.* 571; 89 Ill. 11.

SEPARATE MAINTENANCE.—

If a husband and wife cannot agree so as to carry out the purposes of their union—mutual love and respect, and duty to their children—they may resolve to live apart. In such case, the phrase "separate maintenance," means the allowance made by the husband for the wife's maintenance and support.

A mere agreement for a separation will not be specifically enforced in equity by a decree establishing it personally, whether the covenants be or be not binding on the husband and trustees; for the effect of the decree would be to make them binding on the wife, and to make married people to effect, at their pleasure, a partial dissolution of their solemn contract.

If, after the separation, the husband and wife be reconciled, and live together again, that circumstance will put an end to the agreement, and determine the separate allowance.

SEPARATE PROPERTY, (of married woman, defined). 13 Fla. 117, 126.

SEPARATE USE, (synonymous with "sole use"). 1 Madd. 207.

— (of married woman). 12 Pick. (Mass.) 173; 5 Madd. 408; 5 Ves. 517; 9 *Id.* 583.

— (in a will). 3 Browne (Pa.) 383 n.; 2 P. Wms. 316, 318.

SEPARATIM.—Severally. A word which, in ancient deeds, made a several covenant.

SEPARATION.—

§ 1. A provision or agreement for the future separation of a husband and wife is void, being in derogation of the marriage contract. *See* *DEROGATION*, § 2.

§ 2. An agreement for immediate separation is valid, because it is made to meet a state of things which, however undesirable in itself, has in fact become inevitable. (Poll. Cont. 249.) An agreement of this kind generally takes the form of a deed.

SEPARATION DEEDS.—Owing to the rule that a wife cannot, in general, contract with her husband, (Macq. Husb. & W. 367; Poll. Cont. 60;) the deed is made between the husband and a trustee for the wife, (*Id.*; Dav. Prec. Conv. v. (2) 668; Browne Div. 135 *et seq.*; Hunt v. Hunt, 4 DeG. F. & J. 221;) and generally contains provisions for the allowance by the husband of an annuity for the wife, for his indemnification by the trustee against the wife's debts, for the custody and education of the children, &c. (Chit. Cont. 618.) It follows from the nature of a separation deed, that it is avoided by subsequent reconciliation and cohabitation (*Id.*), but while it remains in force, it is a bar to a suit for restitution of conjugal rights. Marshall v. Marshall, 5 P. D. 19.

SEPARATION DEED, (when will be enforced). 2 Hill (N. Y.) 260.

SEPARATION ORDER.—In England, where a husband is convicted of an aggravated assault upon his wife, the court or magistrate may order that the wife shall be no longer bound to cohabit with him; such an order has the same effect as a decree of judicial separation on the ground of cruelty; it may also provide for the payment of a weekly sum by the husband to the wife and for the custody of the children. Matrimonial Causes Act, 1878, § 4.

SEPARATISTS.—Seceders from the Church of England. They, like Quakers, solemnly affirm, instead of taking the usual oath, before they give evidence. *See* 3 and 4 Will. IV. c. 82. *See, also*, *AFFIRM*, § 3.

SEPARIA.—Several or severed and divided from other ground.—*Par. Antig.* 336.

SEPTENNIAL ELECTIONS.—The English parliament must expire or die a natural death at the end of every seventh year, if not previously dissolved by the royal prerogative. 1 Geo. I. st. 2, c. 38.

SEPTUAGESIMA.—The third Sunday before *Quadragesima* Sunday in Lent, being about the seventieth day before Easter.

SEPTUM.—An enclosure; any place paled in.—*Cowell*.

SEPTUNX.—In the Roman law, a division of the *as*, containing seven *uncie*, or duodecimal parts; the proportion of seven-twelfths. *Tayl. Civ. L.* 492.

SEPULTURA.—An offering to the priest for the burial of a dead body.

Sequamur vestigia patrum nostrorum (Jenk. Cent.): Let us follow the footsteps of our fathers.

SEQUATUR SUB SUO PERICULO.—A writ that lay where a summons *ad warrantizandum* was awarded, and the sheriff returned that he had nothing whereby he might be summoned, then issued an *alias* and a *pluries*, and if he came not in on the *pluries*, this writ issued.—*O. N. B.* 163.

SEQUELA CAUSÆ.—The process and depending issue of a cause for trial.—*Cowell*.

SEQUELA CURLÆ.—Suit of court.—*Cowell*.

SEQUELA MOLENDINA.—See **SECTA AD MOLENDINUM**.

SEQUELA VILLANORUM.—The family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord.—*Par. Antiq.* 216.

SEQUELS.—Small allowances of meal, or manufactured victuals made to the servants at a mill where corn was ground, by tenure, in Scotland. See **THIRLAGE**.

SEQUENDUM ET PROSEQUENDUM.—To follow and prosecute a cause.

SEQUESTER, as used in the civil law, signified to renounce or disclaim, &c. As when a widow came into court and disclaimed having anything to do with her deceased husband's estate, she was said to sequester. The word more commonly signifies the act of taking in execution under a writ of sequestration. See **SEQUESTRATION**.

SEQUESTRARI FACIAS.—A writ issued for the purpose of enforcing a judgment against a beneficed clergyman, when a *fi. fa.* has been issued and returned *nulla bona*. It commands the bishop of the diocese to enter into the benefice and sequester the rents, tithes, and profits until the debt is satisfied. The bishop

executes the writ by issuing a sequestration (*q. v.*, § 3). *Chit. Gen. Pr.* 1284; *Dan. Ch. Pr.* 927; *Sm. Ac.* (11 edit.) 397. See **LEVARI FACIAS**; **WRIT**.

SEQUESTRATIO.—In the civil law, the separating or setting aside of a thing in controversy, from the possession of both parties that contend for it; it is two-fold—*voluntary*, done by consent of all parties, and *necessary*, when a judge orders it.

SEQUESTRATION—SEQUESTRATOR.—

§ 1. A sequestration is where, by some judicial or quasi-judicial process, property is temporarily placed in the hands of one or more persons, called "sequestrators," who manage it and receive the rents and profits. (See *In re Australian, &c., Co., L. R.* 20 Eq. 326.) The term is in common use in this sense in Louisiana.

§ 2. **Writ of sequestration.**—In the procedure of the English High Court of Justice, a sequestration is a means of enforcing obedience to a judgment or order requiring a person to do an act (*e. g.* pay money into court, deliver up a chattel, &c.)^{*} It is a writ or commission directed to certain persons (usually four in number) nominated by the person prosecuting the judgment, and empowers them to enter upon the real estate of the disobedient person, and receive the rents and profits thereof, and take his chattels, and keep them in their hands, until he performs the act required. (*Dan. Ch. Pr.* 912.) As to sequestration for costs, see *Rules of Court*, xlvii., 2 (April, 1880). The sequestrators are officers of the court, and are bound to account for what they receive. See **WRIT OF ASSISTANCE**.

§ 3. **By bishop.**—When a *fi. fa. de bonis ecclesiasticis* or a *sequestrari facias* (see those titles) is directed to a bishop, he issues a sequestration, which is in the nature of a warrant, addressed to the church wardens, requiring them to levy the debt out of the tithes and other profits of the debtor's benefice. *Chit. Gen. Pr.* 1283; *Sm. Ac.* (11 edit.) 396.

§ 4. **Mayor's Court.**—In the Mayor's Court of London, "a sequestration is an attachment of the property of a person in a warehouse or other place belonging to and abandoned by him. It has the same object as the ordinary attachment, viz., to compel the appearance of the defendant to an action" (*Brand. For. Att.* 145), and in default to satisfy the plaintiff's debt by appraisal and execution. (See **FOREIGN ATTACHMENT**.) The practice is rarely resorted to.

§ 5. **Of benefice.**—In English ecclesiastical law, where a benefice becomes vacant, a sequestration is usually granted by the bishop to the church wardens, who manage all the profits and expenses of the benefice, plough and sow the glebe, receive tithes, and provide for the necessary cure of souls. They are bound to account

* *Rules of Court*, xlii., xlvii. But not, apparently, of enforcing a simple judgment for a debt

or an order for the payment of money. *Ex parte Nelson*, 14 Ch. D. 41.

for the profits to the new incumbent. (Phillim. Ecc. L. 497.) Sequestration is also usually granted in a cause of spoliation (*q. v.*) (*Id.* 516), or as a punishment (*e. g.* for non-residence), or as a mode of compelling payment of money for dilapidations, or the like. *Id.* 1378; Bankruptcy Act, 1869, § 88; Sequestration Act, 1871.

SEQUESTRATION, (defined). 2 Wheat. (U. S.) 179 n.

SEQUESTRATORS.—See SEQUESTRATION.

SEQUESTRE.—In Roman law, a deposit made with a stakeholder or middleman pending the decision of a certain event, or dispute. He had the *interim possessio civilis*, and not merely the detention of the thing, or *possessio naturalis*. Dig. 16, 3, 17, 1. See DEPOSITUM; DEPOT.

SEQUESTRO HABENDO.—A judicial writ for the discharging a sequestration of the profits of a church benefice, granted by the bishop at the sovereign's command, thereby to compel the parson to appear at the suit of another; upon his appearance, the parson may have this writ for the release of the sequestration.—*Reg. Jud.* 36.

Sequi debet potentia justitiam non præcedere (2 Inst. 454): Power should follow justice, not precede it.

SERF.—The slave of feudalism. See SERVI.

SERGEANT.—(1) An inferior officer in the army; (2) an officer of municipal police next in rank to the captain of a precinct.

SERGEANTY, SEARGEANTY; or SERJEANTY.—A service anciently due to the crown for lands held of it, and which could not be due to any other lord. It was divided into *grand* and *petit*. See those titles, and TENURE.

SERIATIM.—Severally, separately, individually, one by one; *e. g.* "The judges delivered their judgments *seriatim*."

SERIOUS BODILY HARM, (synonymous with "great bodily harm"). 74 Ill. 228.

Serjeantia idem est quod servitium (Co. Litt. 105): Serjeanty is the same as service.

SERJEANTS-AT-ARMS.—

§ 1. In English law.—Officers of the crown whose duty is nominally to attend the person of the sovereign, to arrest traitors, to attend the Lord High Steward (*q. v.*) when sitting in judgment on traitors, and the like. "Two of them, by the king's allowance, do attend on the two Houses of Parliament, whose office in the

House of Commons is the keeping of the doors and (as of late it hath been used) the execution of such commands, especially touching the apprehension of any offender, as that house shall enjoin him. Another of them attends on the lord chancellor or lord keeper, in the Chancery, and one on the lord-treasurer of England." Blount *s. v.*; Staunf. Pl. Cor. 152a.

§ 2. The serjeants-at-arms attending on the lord chancellor (the office is generally held by the same person as the serjeant-at-arms of the House of Lords) is now an officer of the Supreme Court. (Judicature Act, 1873, § 77.) His principal duty is to arrest persons guilty of contempt of court in proceedings in the Chancery Division when so ordered. Thus, when a writ of attachment has been issued against a person for disobedience to an order of the court, and the sheriff returns *non est inventus*, the serjeant-at-arms may be ordered to arrest the contemnor. Dan. Ch. Fr. 910; Consolidated Orders, xxix.; Orders of the Court of Chancery made under the Debtors' Act, 1869.

§ 3. In American law.—Officers appointed by a legislative body, whose duties are to enforce the orders given by such bodies, generally under the warrant of its presiding officer.—*Bowyer*.

SERJEANTS-AT-LAW.—Barristers of superior degree, in England, to which they are called by writ under the great seal. They form an inn called "Serjeants' Inn."* Formerly they were supposed to serve the crown (hence their name, serjeants or *servientes ad legem*); but in more modern times the degree was conferred on eminent counsel as a distinction, without reference to their services to the crown. Serjeants have precedence over junior barristers. They formerly had a right of exclusive audience in the Court of Common Pleas, which was abolished in 1846. (Stat. 9 and 10 Vict. c. 54.) When a serjeant was appointed, it was customary for him to present gold rings, bearing a motto, to the other serjeants; this was called "giving rings." Of late years the degree of queen's counsel (*q. v.*) has gradually supplanted that of serjeant, and now the abolition of the rule requiring every judge of the superior courts of common law to be a serjeant (Judicature Act, 1873, § 8,) has made the extinction of the order of serjeants merely a question of time. As to the history of serjeants, see Man. S. ad l.; Fortes. ch. 1.; 1 Steph. Com. 17; 3 *Id.* 272. See BARRISTER; INNS OF COURT.

SERJEANTS' INN.—See SERJEANTS-AT-LAW.

SERJEANTY.—See GRAND SERJEANTY; PETTY SERJEANTY.

Sermo index animi (5 Co. 118): Speech is an index of the mind.

Sermo relatus ad personam intelligi debet de conditione personæ (4 Co. 16):

* The buildings and property of the inn have recently been sold and the proceeds divided among the members.

A speech relating to a person is to be understood as relating to his condition.

Thus, saying to an attorney that he is known to deal corruptly, is to be understood as meaning that he deals corruptly in his office of an attorney. See *Birchley's Case*, 4 Co. 16.

Sermones semper accipiendi sunt secundum subjectam materiam, et conditionem personarum (4 Co. 14): Language is always to be understood according to its subject-matter, and the condition of the persons.

SERVAGE.—When a tenant, besides payment of a certain rent, finds one or more workmen for his lord's service. King John brought the crown of England in servage to the See of Rome. 2 Inst. 174; 1 Ric. II. c. 6.

SERVANT.—See **MASTER AND SERVANT**.

SERVANT, (defined). 3 Serg. & R. (Pa.) 351. — (who is). 4 Mass. 580, 584; 24 Barb. (N. Y.) 87; 43 Id. 162; 49 Id. 294; 10 Wend. (N. Y.) 298, 299; 1 Ashm. (Pa.) 323; 5 Binn. (Pa.) 167, 175; 2 Yeates (Pa.) 323; 1 Cowp. 54; 15 East 639.

— (who is not). 1 McCrary (U. S.) 18; 44 Ga. 328; 2 So. Car. 7; 2 Vern. 546.

— (distinguished from apprentice). 1 Str. 10.

— (includes apprentice). 3 Rawle (Pa.) 306.

— (when means menial servant). 5 La. 15.

— (master may maintain trespass for an injury to). 3 Den. (N. Y.) 369.

— (liability of master for injuries to). 1 Houst. (Del.) 469.

— (in a statute). 2 Dall. (U. S.) 198, 199; 12 Abb. (N. Y.) Pr. N. s. 252; 42 How. (N. Y.) Pr. 100; 37 N. Y. 640; 3 Robt. (N. Y.) 316; 5 Binn. (Pa.) 167, 168.

— (in a will). 4 Com. Dig. 155; 8 Id. 475.

SERVANT, DOMESTIC, (who is not). 1 Wils. 78, 79.

SERVANT, DOMESTIC, OF A FOREIGN MINISTER, (who is not). 1 Burr. 401.

SERVANTS, (in a statute). 2 App. Cas. 702.

— (in a will). 12 Ves. 114.

SERVANTS, MENIAL, (defined). Reeve Dom. Rel. 347.

SERVANTS, FELLOW, (defined). 22 Int. Rev. Rec. 257.

SERVANTS, LABORERS AND WORKMEN IN HUSBANDRY, (in a statute). 1 Chit. Gen. Pr. 72.

SERVE.—See **SERVICE**.

SERVE A PRIVATE TABLE, (in a lease). 124 Mass. 534.

SERVE A WRIT, (in a statute). 1 Str. 388.

SERVED, (return of, on a writ of ejectment). 10 Serg. & R. (Pa.) 151.

SERVI.—Bondmen, or servile tenants. They were of four sorts: (1) Such as sold themselves for a livelihood; (2) debtors sold because they were unable to pay their debts; (3)

captives in war, retained and employed as perfect slaves; (4) *nativi*, servants born as such, solely belonging to the lord. There were also said to be *servi testamentales*, those which were afterwards called "covenant servants."—*Cowell*.

SERVI REDEMPTIONE.—Criminal slaves in the time of Henry I. 1 Kemble Sax. 197 (1849).

SERVI TESTAMENTALES.—Covenant servants.

SERVICE.—

§ 1. In the law of tenure, a service is a duty due from a tenant to his lord. Services are or were of various kinds. See 2 Bl. Com. 60; Co. Litt. 64 a *et seq.*, 95 a.

§ 2. **Divine, or spiritual services** are services of a religious nature, either certain, as in the case of tenure by divine service (*q. v.*), or uncertain, as in the case of frankalmoign (*q. v.*)

§ 3. **Temporal—Free—Base**.—Temporal services are services which can be performed by a secular person, and were formerly either (1, free, namely, such as were not unbecoming the character of a soldier or a freeman to perform, as to serve under his lord in the wars, to pay him rent, &c. (*see RENT*); or (2) base or villein services, namely, such as were fit only for peasants or persons of a servile rank, as to plough the lord's land, to make his hedges, &c.

§ 4. **Certain—Uncertain**.—Certain services were such as were fixed in quantity, as to pay a certain rent, or to plough a field for three days every year; examples of uncertain services were, to do military service, or to plough the lord's land when called upon.

§ 5. **Casual—Foreign**.—Accidental or casual services are wardship, relief, heriots and other things, more commonly called incidents (*q. v.*) (4 Co. 8; Co. Copyh. 22 5, 18 *et seq.*, where numerous other divisions of services are given.) In the tenure of knight-service, some services due by the tenant were called foreign, *servitia forinseca*, because they were due to the king and not to the lord; such was the military service in the field due by a tenant by knight's service. Co. Litt. 75b. See **FOREIGN SERVICE**.

§ 6. **Customary**.—Customary services arise by immemorial custom, as where the inhabitants of a place have from time immemorial been accustomed to grind their corn at a certain mill; such a custom gives rise to the obligation on the part of the mill owner to maintain the mill and all provisions for grinding, (servants, &c.) and on the part of the residents to take their corn to be ground there and not elsewhere. *Harbin v. Green*, 110b. 189; *Drake v. Wigglesworth*, Willes 654; 3 Steph. Com. 410. See **SECTA**; **SUBTRACTION**.

§ 7. **Contract of service**.—In the law of contract, service is the relation between master and servant. A contract by which one person binds himself to serve another is called a "contract of service." As to the rights and duties arising from such a contract, see **MASTER AND SERVANT**.

In order to support claims for damages against seducers and abductors, the definition of "service" has been somewhat strained; thus, if a daughter lives with her father, this is a sufficient service to support an action by the father against a man who seduces her. Underh. Torts, 152; 3 Steph. Com. 442. *See* SEDUCTION.

§ 8. **Service of Process, &c.**—In procedure, service is the operation of bringing the contents or effect of a document to the knowledge of the persons concerned. It is of two kinds.

§ 9. **Special service—Direct—Personal.**—Writs, summonses, orders for disobedience to which process of contempt may be issued, and some other judicial documents, require either direct or substituted service. Direct service is effected by actually bringing the document to the person or thing to be served. In the case of a person such service is called "personal." Thus, in an ordinary action, personal service of the writ or summons is effected by showing the original writ to the defendant, and tendering him a copy.

§ 10. **Action in rem.**—An example of direct service on a thing (which might be called "real service") occurs in an ordinary admiralty action *in rem* against a ship; here service of the writ is effected in England by nailing the original writ for a short time to the mast of the vessel, and taking it off, leaving a copy nailed in its place. (Rules of Court, December, 1875. r. 6.) Analogous to this is the mode of serving a writ for the recovery of land in the case of vacant possession; here a copy of the writ is posted on some conspicuous part of the property, (Rules of Court, ix. 8;) this mode of service also partakes of the nature of substituted service.

§ 11. **Substituted.**—The object of substituted service is to provide the best means available under the circumstances for bringing the effect of the document to the knowledge of the party, when he is keeping out of the way, or his whereabouts is not known. (Bland v. Bland, L. R. 3 P. & D. 233.) The usual mode of effecting substituted service is by directly serving the document on some person likely to bring it to the knowledge of the party, (e. g. his wife, agent, &c.,) or by advertising

notice of it, or by sending a copy by post to the party's address. *See* NOTICE; NOTICE OF WRIT.

§ 12. **Accepting service.**—Analogous to substituted service is the practice called "accepting service," which is done by the attorney or solicitor for the party to be served giving a personal undertaking (generally written on the original writ) that he will enter an appearance for him, in order to save his client from the annoyance of being personally served.

§ 13. **Ordinary service.**—Certain documents which are merely the foundation for other proceedings do not require direct or substituted service, but are left at the address of the person for whom the document is intended, or of his attorney or solicitor, if he is represented by one. Notices of motion, petitions, and certain other documents, are served in this manner. In English practice, if served after 6 o'clock P. M. on ordinary days (or after 2 o'clock P. M. on Saturdays), the service counts from the following day (or Monday). (Rules of Court, lvii. 8 (April, 1880).) As to pleadings, *see* DELIVERY, § 4.

SERVICE, (running away is not). 1 Gr. (N. J.) 187.

SERVICE FOR A YEAR, (what is). 12 Mod. 224.

SERVICE IN THE, (in act providing for courts martial for the trial of militia). 5 Wheat. (U. S.) 63.

SERVICE OF AN HEIR.—By the former law of Scotland, before an heir could regularly acquire a right to the ancestor's estate, he had to be served heir. *See* Bell Dict.

SERVICE OF THE SHIP, (when a sailor is in). Abb. (U. S.) Adm. 344.

SERVICE, WHILE IN, (in act respecting volunteers). 108 Mass. 123.

SERVICE, SECULAR.—Worldly service, as contrasted with spiritual or ecclesiastical.—*Cowell*.

SERVICES, (defined). 25 Hun (N. Y.) 115.

SERVICES DONE, (what may be included in a count for). 10 Mass. 224.

SERVICES FONCIERS.—These are in French law the easements of English law.

SERVIENS AD CLAVAM.—A serjeant-at-mace.

SERVIENS AD LEGEM.—Serjeant-at-law (*q. v.*)

SERVIENS DOMINI REGIS.—The king's serjeant, who sometimes acted as the sheriff's deputy.

SERVIENT TENEMENT.—An estate in respect of which a service is owing, as the *dominant tenement* is that to which the service is due. See **EASEMENT**, § 1.

SERVIENTIBUS.—Certain writs touching servants and their masters violating the statutes made against their abuses.—*Reg. Orig.* 189.

Servile est expilationis crimen: sola innocentia libera (2 Inst. 573): The crime of theft is slavish; innocence alone is free. See, also, *Loft* 214.

Servitia personalia sequuntur personam (2 Inst. 374): Personal services follow the person.

SERVITIIS ACQUIETANDIS.—A judicial writ for a man distrained for services to one, when he owes and performs them to another, for the acquittal of such services.—*Reg. Jud.* 27.

SERVITIUM FEODALE ET PRÆDIALE.—A personal service, but due only by reason of lands which were held in fee. *Bract.* l. 2, c. xvi.

SERVITIUM FORINSECUM.—A service which did not belong to the chief lord, but to the king.—*Mon. Ang.* ii. 48.

Servitium, in lege Angliæ, regulariter accipitur pro servitio quod per tenentes dominis suis debetur ratione feodi sui (Co. Litt. 65): Service, by the law of England, means the service which is due from the tenants to the lords, by reason of their fee.

SERVITIUM INTRINSECUM.—That service which was due to the chief lord alone from his tenants within his manor. *Fleta* l. 3.

SERVITIUM LIBERUM.—A service to be done by feudatory tenants, who were called "*liberi homines*," and distinguished from vassals, as was their service, for they were not bound to any of the base services of ploughing the lord's land, &c., but were to find a man and horse, or go with the lord into the army, or to attend the court, &c. It was called also "*servitium liberum armorum*."

SERVITIUM MILITARE.—Knight-service; military service. 2 Bl. Com. 62.

SERVITIUM REGALE.—Royal service; or the prerogatives that, within a royal manor, belonged to the lord of it: which were generally reckoned to be the following, viz., power of judicature in matters of property, and of life and death in felonies and murders; right to waifs and estrays; minting of money; assize of bread and beer, and weights and measures.—*Far. Antiq.* 60.

SERVITOR.—A serving man; particularly applied to students at Oxford, upon the foundation, who are similar to "sizars" at Cambridge.

SERVITORS OF BILLS.—Servants or messengers of the marshal of the Queen's Bench, who were sent abroad with writs, &c., to summon persons to that court. 2 Hen. IV. c. 23.

SERVITUDE, in its original and popular sense, signifies the duty of service, or rather the condition of one who is liable to the performance of services. The word, however, in its legal sense, is applied figuratively to things. When the freedom of ownership in land is fettered or restricted, by reason of some person, other than the owner thereof, having some right therein, the land is said to serve such person; the restricted condition of the ownership, or the right which forms the subject-matter of the restriction, is termed a "servitude;" and the land so burdened with another's right is termed a "servient tenement," while the land belonging to the person enjoying the right is called the "dominant tenement." The word "servitude" may be said to have both a positive and a negative signification: in the former sense denoting the restrictive right belonging to the entitled party; in the latter, the restrictive duty entailed upon the proprietor or possessor of the servient land.—*Brown.* See **EASEMENTS**; **SERVITUDES**.

SERVITUDE, (defined). 3 Kent Com. 435.

Servitus est constitutio jure gentium qua quis domino alieno contra naturam subjiçitur (Co. Litt. 116): Slavery is an institution by the law of nations, by which a man is subjected to a foreign master, contrary to nature.

SERVITUDES.—In Roman law, were the easements and the *profits à prendre* of English law. They were either *prædial* or *personal*; and the *prædial* were sub-divided into *rural* (i. e. easements over land simply as land) and *urban* (i. e. easements over houses, &c., or land built upon). The rural servitudes were *iter, actus, via, aqueductus*; the urban servitudes were ancient lights (*ne luminibus officiatur*), lateral support to houses from houses (*jus immittendi*), protection from rain-spouts of neighboring houses (*jus stillicidie*), &c. The personal servitudes are sometimes said to have been the *usus, fructus, usus*, and *habitatio, sed quere*; because probably they were only the *profits à prendre*, which may exist in *gross*, i. e. in the person as apart from his property.—*Brown.* See **EASEMENTS**; **PROFITS A PRENDER**.

SERVUS.—A slave; a bondman. See **SERVI**.

SESS, or ASSESS.—Rate; tax.

SESSIO.—A sitting or session. *Sessio parliamenti*, a sitting of parliament.—*Cowell*.

SESSION.—The sitting of a court or of justices in court; the time during which a court is open for the transaction of business. Also the time during which a legislative body sits for the transaction of business.

SESSION, (as applied to courts). 3 Hen. & M. (Va.) 27.
— (of legislature). 64 Ill. 82.

SESSION, GREAT, OF WALES.—A court which was abolished by 1 Will. IV. c. 70. The proceedings now issue out of the courts at Westminster, and two of the judges of the superior courts hold the circuits in Wales and Cheshire, as in other English counties.

SESSION OF THE PEACE is a sitting of justices of the peace for the exercise of their powers. There are four kinds: petty, special, quarter and general sessions. See those titles. *Pritch. Quar. Sess.* 1.

SESSIONS OF THE PEACE, (defined). 1 Chit. Crim. L. 134.

SESSIONAL ORDERS.—Certain resolutions which are agreed to by both houses at the commencement of every session of the English Parliament, and have relation to the business and convenience thereof; but they are not intended to continue in force beyond the session in which they are adopted. They are principally of use as directing the order of business.—*Brown*.

SESSIONS.—A sitting of justices of the county in court upon their commission, as the sessions of oyer and terminer, gaol delivery, &c.

SET.—This word appears to be nearly synonymous with "lease." A lease of mines is frequently termed a "mining set."—*Brown*.

SET, (in a covenant in a lease). 12 Ves. 395.
— (as applied to a bill of exchange, defined). 1 Bouv. Inst. 461.

SET ASIDE.—To vacate or annul; as to set aside an award.

SET FIRE TO, (defined). 2 East P. C. 1020.
— (not equivalent to "burn"). 5 Gratt. (Va.) 664.

SET, LET OR ASSIGN, (in a covenant). Com. L. & T. 235.

SET OF EXCHANGE.—It has been common, from a very early period, for the

drawer to draw and deliver to the payee several parts, commonly called a "set," of the same bill of exchange, any one part of which being paid, the others are void. This is done to obviate inconveniences from the mislaying or miscarriage of the bill, and to enable the holder to transmit the same by different conveyances to the drawee, so as to insure the most speedy presentment for acceptance and payment. The general usage in England and America is for the drawer to deliver a set of three parts of the bill to the payee or holder. Where a set consisting of several parts is given, each part ought to contain a condition that it shall be payable only so long as all the others remain unpaid. *Byles Bills* (11 edit.) 387. See **BILL OF EXCHANGE**, § 10.

SET-OFF.—

§ 1. In an action to recover money, a set-off is a cross claim for money by the defendant, for which he might maintain an action against the plaintiff, and which has the effect of extinguishing the plaintiff's claim *pro tanto*, so that he can only recover against the defendant the balance of his claim, after deducting what is due by him to the defendant. (*See Chit. Cont.* 772.) Thus, if A. sues B. for \$100, while he owes B. \$75, a set-off would have the effect of reducing A.'s claim to \$25. The object of this is to prevent cross actions. See **CIRCUMSTANCE OF ACTION**.

§ 2. The right of set-off was introduced in England by Stats. 2 Geo. II. c. 22 and 8 Geo. II. c. 24; but was restricted to mutual debts. (*Leake Cont.* 545.) Under the Judicature Acts mutual claims of any kind, whether for debts or damages, can be set off against one another; but in practice the term "set-off" is generally applied to mutual debts or claims for liquidated amounts, so that one can be deducted from the other; while cross claims in respect of damages, which are unliquidated, are distinguished as "counter-claims" (*q. v.*) See *Newell v. National Bank*, 1 C. P. D. 496.

As to the limitation of a set-off or counter-claim, see **LIMITATION**, § 6.

§ 3. **Judgments.**—In the practice of the common law courts, where there are cross judgments in the same or different actions, in the same or different courts, between parties substantially the same, whether for debt (or damages) and costs, or for costs alone, either party may set off the amount of his judgment against that

of the other by obtaining a rule or order to enter satisfaction in both actions for the amount of the smaller debt. *Chit. Gen. Pr.* 723.

As to set-off in bankruptcy, *see* **MUTUAL CREDITS.**

SET-OFF, (defined). 4 *Gill* (Md.) 325.
 — (distinguished from "lien"). 2 *Op. Att.-Gen.* 677.

— (when inadmissible). 3 *Halst.* (N. J.) 212; 3 *Whart.* (Pa.) 150, 196.

— (what may be subject of). 57 *Ala.* 458.

— (what is not proper subject of). 1 *Halst.* (N. J.) 104; 2 *Hill* (N. Y.) 210.

— (in rule of court). 5 *C. P. D.* 34.

SET-OFF, EQUITABLE, (when allowed). 11 *Ves.* 24.

SET SEINE, (in a statute). 4 *Pick.* (Mass.) 165.

SET UP NOTICE, (in a statute). 3 *Gr.* (N. J.) 81.

SET UP, OCCUPIED, USED OR EXERCISED, (in a statute). 15 *East* 168.

SETTING ASIDE.—All judgments obtained by default may usually be set aside, upon terms, proper grounds to excuse the default being shown, (*Watt v. Barnett*, 3 *Q. B. D.* 183, 363;) also, in any case of mistake, surprise, or accident, any judgment of non-suit may be set aside upon terms.

SETTING ON FIRE, (what constitutes). 1 *Moo. C. C.* 398.

SETTING OUT ON A JOURNEY, (what is not). 49 *Ala.* 355.

SETTING UP A TRADE, (not equivalent to working in it). *Burr.* 2449.

SETTLE.—

§ 1. **Property**.—To settle property is to limit it, or the income of it, to several persons in succession, so that the person for the time being in the possession or enjoyment of it has no power to deprive the others of their right of future enjoyment. *See* **SETTLEMENT**, § 1.

§ 2. **Poor**.—The term "settle" is also applied to paupers. *See* **SETTLEMENT**, § 8.

§ 3. **Document**.—To settle a document is to make it right in form and in substance. Documents of difficulty or complexity, such as mining leases, settlements by will or deed, partnership agreements, &c., are generally settled by counsel. *See* **CONVEYANCER**.

§ 4. In some cases a document requires to be settled by a judge or judicial officer. Thus, when issues are directed to be pre-

pared in an action, and the parties cannot agree on them, they are settled by the judge. In Chancery practice every order (except orders for time and a few others) is settled by the registrar or vice-chancellor in the presence of the parties, unless they agree as to its form, in which case the "settling" consists in their signing the draft as approved. *See* **MINUTES**, § 3; **PASS**, § 2.

SETTLE, (defined). 40 *N. Y.* 533, 541.
 — (equivalent to "pay"). 13 *Ired.* (N. C.) *L.* 272; 4 *Den.* (N. Y.) 225.

— (does not necessarily mean "pay"). 9 *Barb.* (N. Y.) 371.

— (extent of power to). 1 *Hill* (N. Y.) 572.

— (agreement to, does not take the demand out of statute of limitations). 11 *Mass.* 454.

— (covenant to, is not an extinguishment of the debt). 9 *Wheat.* (U. S.) 556.

— (in marriage articles). *L. R.* 5 *H. L.* 688.

— (in a will). 3 *Binn.* (Pa.) 494.

SETTLE LANDS, (covenant to, is not equivalent to covenant to convey and settle lands). 3 *Atk.* 329.

SETTLED ACCOUNT.—*See* **ACCOUNT**, § 4.

SETTLED, (defined). *Hopk.* (N. Y.) 37.
 — (in a statute). 7 *Pet.* (U. S.) 660 app.; 2 *Leach C. C.* 910.

SETTLED ACCOUNT, (what is). 1 *Baldw.* (U. S.) 418, 536.

— (what is not). 8 *Pick.* (Mass.) 187; 5 *Ves.* 87 n., 837.

SETTLED CLAIM, (as used in act 1851, ch. 213). 39 *Me.* 203.

SETTLED ESTATES ACT.—The act now in force in England, is the Settled Estates Act, 1877, which repeals the old acts 19 and 20 *Vict. c.* 120, (the Leases and Sales of Settled Estates Act, 1856,) 21 and 22 *Vict. c.* 77; 27 and 28 *Vict. c.* 45; 37 and 38 *Vict. c.* 33, and 39 and 40 *Vict. c.* 30. It enables the tenant for life of settled land (*i. e.* of land limited to or in trust for any persons by way of succession) (§ 2) to grant leases not exceeding twenty-one years, (subject to certain restrictions as to the amount of rent, &c.,) so as to make them binding on the reversioner. (§§ 46, 47.) It also empowers the Chancery Division of the High Court—(1) to authorize long leases of settled land (§ 4 *et seq.*); (2) to order sales of settled land, or of timber on settled land (§ 16 *et seq.*), and (3) to direct any part of a settled estate to be laid out for streets, gardens, sewers, &c. (§ 20 *et seq.*) Provision is made for giving notice to the persons interested of any application to the court under the act. (§ 24 *et seq.*) As to the practice, *see* the Orders under the act (issued December, 1878); for the practice under the repealed acts, *see* *Dan. Ch. Pr.* 1332 *et seq.*; *also*, *Char. Real Prop. Stat.*

SETTLED LIMITS OF THE UNITED STATES, (in insurance policy). 22 N. Y. 427

SETTLEMENT.—

§ 1. Of property generally.—A settlement is an instrument by which property, or the enjoyment of property, is limited to several persons in succession. (*See SETTLE*, § 1.) Generally the word "settlement" implies a deed or an instrument equivalent to a deed (such as articles or agreement for a settlement); but a settlement may be and often is made by will, and occasionally by private act of parliament. *See* the definition of "settlement" in the English Fines and Recoveries Act, § 1.

The most important kinds of settlements are: marriage, or *ante-nuptial* settlements, *post-nuptial* and voluntary settlements, and family settlements, more usually called "resettlements" (*q. v.*) Settlements are also sometimes directed by a court to be entered into by the parties to a proceeding. For instance, by a ward of court on his or her marriage, whether under the act 18 and 19 Vict. c. 43, or not. (*Dan. Ch. Pr.* 1206.) As to the power of the court to modify settlements in cases of divorce, *see* Stats. 22 and 23 Vict. c. 61, § 5; 41 and 42 Vict. c. 19, § 3; *Browne Div.* 185 *et seq.*; *Burton v. Sturgeon*, 2 Ch. D. 318.

§ 2. Marriage settlements.—A marriage, or *ante-nuptial* settlement, as its name implies, is an instrument executed before a marriage, and wholly or partly in consideration of it, for the purpose of regulating the enjoyment and devolution of real or personal property. Such settlements are sometimes distinguished as real and personal settlements, a real settlement being one in which the property is throughout treated as land, so that if a person entitled under it dies, his share goes to his heir or devisee, while a personal settlement is one in which the property is either personalty, or realty directed to be turned into money, and therefore treated as personalty. *Wms. Sett.* 123. As to settlements generally, *see* 3 *Dav. Prec. Conv. passim*. *See* CONVERSION.

§ 3. Personal.—An ordinary settlement of personalty or realty directed to be sold (the object of which is to make an equal

provision for all the children) consists of a conveyance of (or agreement to convey) the property to trustees, to be held by them in trust for the settlor until the marriage takes place (which generally is a few hours after the execution of the settlement); followed by a declaration of the trusts on which it is to be held after the marriage, namely, to pay the income to the husband for life (assuming that the property is brought into trust by him), and after his death to the wife for life, and after the death of the survivor to hold the property in trust for the issue of the marriage in such shares as the husband and wife jointly, or the survivor of them, shall have appointed, or in default of and subject to any appointment upon trust for all the issue who attain twenty-one, or (being daughters) marry, in equal shares, with an ultimate trust, by which, if there is no issue of the marriage, the property reverts to the husband or settlor. (*Wms. Sett.* 124 *et seq.*) If the property is brought into settlement by the wife, the income is first given to the wife for her life for her separate use, generally with a restraint on anticipation (*q. v.*) In addition to these, the fundamental clauses, there are provisions as to the securities in which the trustees are to be at liberty to invest the settled property; covenants to settle after-acquired property (*infra*, § 5); hotch-pot, maintenance, advancement and accumulation clauses, and provisions for the appointment of new trustees. *Elph. Conv.* 266 *et seq.*; *Wats. Comp. Eq.* 567 *et seq.* *See* the various titles.

§ 4. Strict settlements.—A marriage settlement of real property, where the object is to retain the estate in the family (hence sometimes called a "family settlement," (*Wms. Sett.* 212,) or, more commonly, a "strict settlement,") has, in the most simple case, where the intended husband is seized in fee of the property, the following principal objects: "*First*, to make provision for the wife; this is effected by securing the payment to her of two annuities; the one, payable during her husband's lifetime, called 'pin-money;' the other, payable after his death, called a 'jointure.' *Second*, to provide for the payment of gross sums of money, called 'portions,' to such of the younger children of the marriage

as attain majority. *Third*, to provide that the property charged with these provisions for the wife and younger children should go as a whole to the eldest son." (Elph. Conv. 322; Wats. Comp. Eq. 577; Wms. Sett. 212.) These objects are effected by limiting a long term to trustees to secure the pin-money, followed by another long term to other trustees to secure the jointure; followed by another long term to secure the portions; subject to these terms, the land is limited to the husband for life, with remainder to the sons of the marriage successively in tail; failing sons and their issue, it is limited to the daughters as tenants in common in tail, and failing daughters and their issue, it is limited to the settlor in fee. Incidental clauses are those giving tenants for life in possession, or the trustees, power of granting leases and of effecting sales and exchanges of the settled land; and covenants for title by the settlor. Elph. Conv. 328.

§ 5. **Covenant to settle after-acquired property.**—A settlement often contains a covenant by the husband or wife to settle all property exceeding a certain amount in value which shall be acquired by him or her after the marriage. Such a covenant generally binds the covenantor to settle not only property in which he (or she) has no interest at the time of the marriage, but also interests which were contingent, and, in some cases, even vested at the time of the marriage, such as reversions. (Elph. Conv. 273; Wats. Comp. Eq. 602.) As to the effect of bankruptcy on such a covenant by a trader, *see* English Bankruptcy Act, 1869, § 91.

§ 6. **Voluntary settlements—Post-nuptial, &c.**—Voluntary settlements are settlements made otherwise than for valuable consideration. (*See* VOLUNTARY.) A *post-nuptial* settlement (*i. e.* one made by a husband on his wife or family after the marriage without some new consideration) is a voluntary settlement.

§ 7. A voluntary settlement of land may be defeated by a subsequent conveyance by the settlor to a purchaser for value. (Stat. 27 Eliz. c. 4. *See* VOLUNTARY.) And a voluntary settlement of any property made by a trader is void if the settlor becomes bankrupt within two years from its date; it is also void if he becomes

bankrupt within ten years from its date, unless it is proved that at the time of making it he was able to pay all his debts without the aid of the property comprised in it. (English Bankruptcy Act, 1869, § 91; Wms. Sett. 354 *et seq.*) A voluntary settlement is also void if it falls within the purview of the Stat. 13 Eliz. c. 5; as to which, *see* FRAUDULENT CONVEYANCE, § 1.

§ 8. **Of pauper.**—A pauper is said to be settled in a parish (or union) when he has acquired a right to permanent relief there, as opposed to casual and irremovable paupers. 3 Steph. Com. 52 *et seq.* *See* IRREMOVABILITY; POOR LAW.

A settlement is either original or derivative.

§ 9. **An original settlement** is one acquired by the pauper without reference to other persons, and that (1) by birth in the parish, unless he has some other settlement, original or derivative; (2) by renting a tenement of a certain value per year at least for one whole year, and residing in the parish for forty days; (3) in the case of an apprentice, by inhabiting in the parish for forty days; (4) by having an estate in the parish of any nature or value, and inhabiting within ten miles thereof; (5) by paying parochial rates and taxes in respect of a tenement within the parish of the yearly value of £10 a year at least; (6) by residing in the parish for three years. Stat. 39 and 40 Vict. c. 61, § 34. *See* RESIDENCE, § 2.

§ 10. **A derivative settlement** is one derived from some other person, and is either (1) by parentage, the rule being that every child under the age of sixteen takes the settlement of its father or widowed mother (or, if illegitimate, of its mother,) until it acquires the age of sixteen, and retains that settlement until it acquires another, unless its parent had a derivative settlement, in which case the child's settlement is ascertained without reference to the parent; (2) by marriage, a female pauper always taking the settlement of her husband. Stat. 39 and 40, Vict. c. 61, § 35; *Great Yarmouth v. City of London*, 3 Q. B. D. 232; *Westbury-on-Severn v. Barrow-in-Furness*, 3 Ex. D. 88.

SETTLEMENT, (what constitutes). 6 Serg. & R. (Pa.) 250.

SETTLEMENT, (what is not). 15 Pet. (U. S.) 275; 4 Halst. (N. J.) 263.

— (how acquired). 14 Johns. (N. Y.) 199; 2 Watts (Pa.) 411; 3 Yeates (Pa.) 277; 2 Ld. Raym. 1511.

— (what is an abandonment of). 1 Watts (Pa.) 48.

— (distinguished from "improvement"). 4 Binn. (Pa.) 218.

— (as applied to a pauper). 9 Me. 293.

— (of estate). 41 Mich. 409.

— (in a statute). 3 Cranch (U. S.) 47 n., 66; 4 Dall. (U. S.) 161, 187, 366, 395, 7 Pet. (U. S.) 660 app.; 1 Wash. (U. S.) 18; 9 Cush. (Mass.) 538.

SETTLEMENT, ACT OF.—The Stat. 12 and 13 Will. III. c. 2, by which the crown was limited to the House of Hanover, and some new provisions were added at the same time for the better securing our religion, laws and liberties.

SETTLEMENT, DEED OF.—A deed made for the purpose of settling property, *i. e.* arranging the mode and extent of the enjoyment thereof. The party who settles property is called the "settlor;" and usually his wife and children, or his creditors, or his near relations, are the beneficiaries taking interests under the settlement.

SETTLEMENT OF ACCOUNTS, (in a statute). 1 Baldw. (U. S.) 436.

SETTLEMENT ON LANDS, (in act of April 3d, 1792). Add. (Pa.) 334, 337.

SETTLEMENT RIGHT, (may be affected by the conduct of the widow of the settler). 3 Yeates (Pa.) 269.

SETTLEMENT, STRICT, (in an order of court). 1 Atk. 593.

SETTLER, (who is). 3 Op. Att. Gen. 182; 4 Yeates (Pa.) 534, 537.

SETTLER, ACTUAL, (in a statute). 4 Serg. & R. (Pa.) 237.

SETTLING, AFTER, (in a will). 11 Pick. (Mass.) 377.

SETTLING DAY.—The day on which transactions for the "account" are made up on the English stock exchange. In consols they are monthly; in other investments, twice in the month.

SEVENTH CHILD, (in a will). 3 Bro. Ch. 148.

SEVENTH OR YOUNGEST CHILD, (in a will). 8 Com. Dig. 472; 2 Cox Ch. 258.

SEVENTY ACRES, (in a deed). 2 Ohio. 327.

SEVER—SEVERABLE—SEVERANCE.—

§ 1. To sever is to divide, and severable is that which is divisible. Thus, a joint tenancy is severed when one or two joint tenants conveys his interest to a stranger,

because the other tenant and the stranger are then tenants in common. (Co. Litt. 191a.) As to severable hereditaments and chattels, *see Id.* 164b, 200a. *See, also, JOINT TENANCY*, § 7.

§ 2. Again, when a claim is composed of several parts, some of them may be put forward or enforced without the others, the latter are said to be severable, and the act of severing them is called "severance;" as where A. having brought an action in an inferior court for causes which were partly within and partly without the jurisdiction of the court, he was allowed to sever them by abandoning the latter part of his case, so as to keep the action in the inferior court. (*Ellis v. Fleming*, 1 C. P. D. 237.) To "sever in action" is to bring several, *i. e.* separate actions. (Co. Litt. 195b.) And when two or more defendants to an action put in separate defenses, instead of joining in one defense, they are said to sever. *See ENTIRE; APPORTIONMENT*, § 3 *et seq.*; *SEVERAL; SEVERALTY*.

§ 3. *Fixtures, crops, &c.*—Severance is also the act of removing fixtures, growing crops, or minerals from land. (Chit. Cont. 323 *et seq.*) A tenant who is entitled to remove fixtures must sever them during his term, or he loses his right. (*Id.*) As to the effect of severance on growing crops and minerals, *see those titles*.

SEVERAL is opposed to "joint." Thus, tenants in common of land are said to be seised by several titles, so that if they are disseised each has a separate right of action, while joint tenants are seised by a joint title, and therefore if they are disseised they ought to bring one action to recover the land. (Litt. § 314.) As to several hereditaments, *see HEREDITAMENT*, § 7; as to a several pasture, *see PASTURE*, § 3. *See, also, SEVERALTY*.

SEVERAL, (more than two; includes seven). 58 Ala. 153, 164.

— (in a will). 67 N. Y. 348.

SEVERAL AND RESPECTIVE, (in a covenant). 10 Barn. & C. 410.

SEVERAL BOND, (what is). 5 Halst. (N. J.) 119.

— (distinguished from "joint bond"). 1 East 400.

SEVERAL COUNTS.—Where a plaintiff has several distinct causes of action, he is allowed to pursue them

cumulatively in the same action, subject to certain rules which the law prescribes.

SEVERAL COVENANT.—A covenant by two or more separately.

SEVERAL DEMISES.—Prior to the Common Law Procedure Acts, 1852–1860, it was necessary, in England, that the plaintiff in ejectment should make a demise, and that he should have the legal estate in him for that purpose. Wherefore, in case of any doubt whether the legal estate was in A., or in B., or in C., it was usual in framing the declaration to insert a demise by each, and the declaration was then said to contain several demises. But now no demise at all is necessary to an action of ejectment. See **EJECTMENT**.

SEVERAL FISHERY.—See **FISHERY**, § 4.

SEVERAL FISHERY, (defined). 2 Bl. Com. 39, 40; 1 Steph. Com. 671 n.

—— (what is). 3 Burr. 2817.

—— (owner of, is presumed to own the soil). 2 Chit. 658.

SEVERAL INHERITANCE.—An inheritance conveyed so as to descend to two persons severally, by moieties, &c. See **INHERITANCE**, § 5.

SEVERAL TAIL.—An entail severally to two; as, if land is given to two men and their wives and to the heirs of their bodies begotten; here the donees have a joint estate for their two lives, and yet they have a several inheritance, because the issue of the one shall have his moiety, and the issue of the other the other moiety.—*Cowell*.

SEVERAL TENANCY.—A tenancy which is separate, and not held jointly with another person.

SEVERALLY AND RESPECTIVELY, (in a grant). 5 Mod. 28.

SEVERALLY BE AND APPEAR TO SHOW CAUSE, THAT THEY, (in a *scire facias*). 3 Anstr. 811.

SEVERALLY DIE, AS THEY, (in a will). 2 Atk. 441.

SEVERALTY.—

§ 1. Property is said to belong to persons in severalty when the share of each is ascertained, so that he can exclude the others from it, as opposed to joint ownership, ownership in common, and coparcenary, where the owners hold in undivided shares. Litt. § 243 *et seq.* See **ESTATE**, § 11.

§ 2. Usually when land is held in severalty, it is divided so that each of the owners has a part to himself, but they may agree that one shall have the land for one part of the year, another for another, and so on, and in this case also they are said to “hold in severalty.” Co. Litt. 4a, 167a, 180a. See **INHERITANCE**, § 5.

§ 3. The term “severalty” is especially applied, in England, to the case of adjoining meadows undivided from each other, but belonging, either permanently or in what are called “shifting severalties” (*infra*, § 4), to separate owners, and held in severalty until the crops have been carried, when the whole is thrown open as pasture for the cattle of all the owners, and in some cases for the cattle of other persons as well: each owner is called a “severalty owner,” and his rights of pasture are called “severalty rights,” as opposed to the rights of persons not owners. Cooke Incl. 47, 163 n. See **COMMON**, §§ 4, 7; **COMMONABLE**, § 2; **DOLE**; **LAMMAS LANDS**; **OPEN FIELDS**; **SHACK**.

§ 4. **Shifting severalties.**—When a number of persons are the owners of land, and an exclusive share is allotted to each for a certain time, at the expiration of which the shares are again distributed, so that the occupation varies or shifts from time to time, they are said to hold by “shifting severalties.” (See Co. Litt. 4a.) The most usual instance of shifting severalties occurs in the case of open fields and other commonable lands, (see **COMMONABLE**, § 2; **DOLE**; **LOT-MEAD**; **SHACK**;) where the severalty holding of each owner varies sometimes by rotation, sometimes by lot, while in some places the choice is awarded to the best runner or wrestler, or determined by other fantastic methods. Eli. Com. 31; Cooke Incl. 48.

SEVERALTY, (estates in, defined). 1 Steph. Com. 338.

SEVERANCE.—Separating or severing. See **SEVER**.

SEWAGE.—See **SEWER**.

SEWARD, or SEAWARD.—One who guards the sea-coast; *custos maris*.

SEWER.—OLD-FRENCH: *essier, essuter*; LATIN: *essuccare*, to dry. Littré, s. v. *Essuyer*.

§ 1. “Sewer” originally meant an open trench or channel, made for carrying off surplus water from land near the sea or a river, or from marshy ground. Commissioners of sewers are officials appointed by the government, to survey, repair and

keep in order sewers, streams, sluices and embankments within their district. In England they form courts of record, and have power to make orders and assess rates. *Cal. Sew.*; 3 *Steph. Com.* 296.

§ 2. In its modern and more usual sense, a sewer means an underground or covered channel used for the drainage of two or more separate buildings, as opposed to a "drain," which is a channel used for carrying off the drainage of one building or set of buildings in one curtilage. *See DRAIN*, § 2.

§ 3. The English Metropolitan Commissioners of Sewers were created by Stat. 11 and 12 Vict. c. 112; they were abolished by Stat. 18 and 19 Vict. c. 120, and their functions transferred partly to the metropolitan vestries and district boards, and partly to the Metropolitan Board of Works (*q. v.*)

SEWER, (when includes a wall). *Wilberf. Stat. L.* 130.

— (in public health act). *L. R.* 1 Q. B. 328.

SEWER, COMMON, (in a city charter). 110 *Mass.* 433.

SEXAGESIMA SUNDAY.—The second Sunday before Lent, being about the sixtieth day before Easter.

SEXTARY.—An ancient measure both of liquids and dry commodities.—*Spel. Gloss.*

SEXTERY LANDS.—Lands given to a church or religious house for maintenance of a sexton or sacristan.—*Cowell.*

SEXTUS DECRETALIU. — The sixth decretal. *See CANON LAW*, § 1.

SEXUAL INTERCOURSE, (synonymous with "carnal knowledge"). 22 *Ohio St.* 543.

SEXUAL RELATION.—Being that of husband and wife, or of persons otherwise cohabiting together as such, is a relationship recognized in law, as regards the liability of the male upon contracts, and as regards the probability of the female's testimony being more or less affected as regards its veracity. (*Best Ev.*)—*Brown.*

SHACK.—"Shack," in the dialect of Norfolk, signifies to ramble or go at large (*Marshall's Rur. Ec. s. v.*), and the name has been adopted in speaking of half-year lands in other counties, probably because the leading case on the subject (7 Co. 5) was concerned with lands in Norfolk. *Id.* *Com.* 31 n.

It sometimes happens that a number of adjacent fields, though held in severalty, *i. e.* by separate owners, and cultivated separately, are, after the crop on each parcel has been carried

in, thrown open as pasture to the cattle of all the owners. "Arable lands cultivated on this plan are called 'shack fields,' and the right of each owner of a part to feed cattle over the whole during the autumn and winter is known in law as common of shack, a right which is distinct in its nature from common because of vicinage, though sometimes said to be nearly identical with it." (*Id.* *Com.* 30.) It is also known as "shackage" and "common of shacker" (*Id.* 30 n.), and the shack lands are sometimes called the "known lands," to distinguish them from an ordinary common, in which there is no distinction of property, and more frequently "half-year lands," from the period during which they are open to pasture. *Id.* 29.

Common of pasture in open meadows (*q. v.*) is of very much the same nature as common of shack. *Id.* 31.

SHALL, (when imperative). 15 *Pet. (U. S.)* 500; 2 *Wheat. (U. S.)* 198; 6 *Daly (N. Y.)* 428; 3 *Atk.* 166.

— (when directory merely). 5 *Otto (U. S.)* 168; 24 *Ill.* 105; 89 *Id.* 571; 95 *Id.* 593; 35 *Am. Rep.* 182; 125 *Mass.* 190, 201; 1 *Gr. (N. J.)* Ch. 409; 5 *Cow. (N. Y.)* 193; 1 *Edw. (N. Y.)* 91; 7 *Barn. & C.* 6.

— (when substituted for "may"). 3 *Dutch. (N. J.)* 407; 22 *Barb. (N. Y.)* 404; 6 *Johns. (N. Y.)* Ch. 101; 51 *N. Y.* 401; 23 *Wend. (N. Y.)* 156.

— (in a submission to arbitration). 2 *Chit. Gen. Pr.* 88.

— (in a will, equivalent to "should"). 3 *P. Wms.* 176.

SHALL AND MAY, (in a marriage settlement). 3 *Atk.* 212.

— (in a statute). 2 *Pa.* 197; 1 *Alc. & N.* 311; 9 *Bing.* 692, 704; 2 *Chit.* 251; 3 *T. R.* 444; 2 *Chit. Gen. Pr.* 198.

SHALL AND MAY BE LAWFUL, (in by-law of corporation). 1 *Barn. & C.* 85.

SHALL AND WILL RELEASE, (in an agreement). 1 *Barn. & Ald.* 8.

SHALL ATTAIN TWENTY-ONE, (in a will). 1 *Ch. D.* 435.

SHALL BE, (in a statute). 8 *Bro. P. C.* 196.

SHALL BE ALLOWED, (in a statute). 4 *Otto (U. S.)* 248.

SHALL BE LAWFUL, (in a statute). 3 *Mart. (La.)* N. s. 532; *Wilberf. Stat. L.* 194, 195, 201, 202, 203, 205.

— (in by-law of corporation). 4 *Barn. & Ald.* 271; 2 *Dowl. & Ry.* 172.

— (in a charter). 5 *Dowl. & Ry.* 414.

SHALL BE SUBJECT TO REMOVAL, (in a statute). *South. (N. J.)* 394.

SHALL BECOME, (in a statute). 8 *Gray (Mass.)* 457.

SHALL GO, (in a statute). 40 *Cal.* 493.

SHALL HAPPEN TO DIE IN MY LIFE-TIME, (in a will). 1 *Meriv.* 325.

SHALL HAVE, (in a will). 2 *Harr. (N. J.)* 290.

SHALL HAVE SETTLED, (in a statute). 3 *Cow. (N. Y.)* 390.

SHALL NOT, (equivalent to "cannot"). 2 *Wash. (U. S.)* 361.

SHALL OR MAY, (in submission to arbitration). 1 *Crompt. & M.* 355.

SHALL RELIEVE, (in a statute). 30 Ind. 117, 125.

SHALL WELL AND TRULY SUBMIT, &c., (in arbitration bond). 4 Minn. 466.

SHAM ANSWER, (defined). 1 Abb. (N. Y.) Pr. 41; 6 How. (N. Y.) Pr. 355; 11 Id. 395, 398; 18 N. Y. 315, 321.

— (what is). 4 Sandf. (N. Y.) 665.

— (what is not). 6 How. (N. Y.) Pr. 312; 7 Id. 171; 8 Id. 485; 9 Id. 57; 15 Id. 329; 45 N. Y. 468; 40 Wis. 555.

— (distinguished from "frivolous answer"). 1 Duer (N. Y.) 649; 5 How. (N. Y.) Pr. 247; 8 Id. 149.

— (not synonymous with "false answer"). 1 Code (N. Y.) n. s. 156; 2 Id. 99; 4 How. (N. Y.) Pr. 155.

SHAM PLEA.—A vexatious or false defense, resorted to for purposes of delay and annoyance. (Steph. Pl. (7 edit.) 383.) Such pleas may be stricken out on motion.

SHAM PLEA, (what is). 1 Chit. Pl. 505.

SHARE.—

§ 1. In the law of corporations and joint stock companies, a share is a definite portion of the capital of a company. With very few exceptions, shares in companies are personal estate, whatever the nature of the company's property or business may be. (Lind. Part. 661 *et seq.*) The ownership of a share entitles the holder to receive a proportionate part of the profits of the company, and to take part in the management of its business, in accordance with the articles of association or other regulations of the company, which also regulate the mode in which shares may be transferred. See MEETING; RESOLUTION; SHAREHOLDER.

§ 2. When the amount of a share has been paid to the company, it is said to be fully paid up. And if the company is a limited one, the liability of the holder of the share is then at an end. (See COMPANY, § 5 *et seq.*) In England, shares may be issued by a company as fully paid up (*e. g.* in consideration of services or works rendered to the company by the person to whom they are issued), but in the case of a company formed under the Companies Acts, the agreement under which they are so taken must be made in writing and filed with the registrar at or before the issue of the shares. Companies Act, 1867, § 25.

§ 3. Conversion into stock.—A company may at any time convert its fully paid shares into stock (*q. v.*)

§ 4. Share-certificate.—A share-certificate is an instrument under the seal of the company, certifying that the person therein named is entitled to a certain number of shares; it is *prima facie* evidence of his title thereto. (Lind. 150, 1187.) Share certificates are not negotiable instruments. See Shropshire Union Rail. Co. v. Reg., L. R. 7 H. L. 496. See, also, SCRIP.

§ 5. Share-warrant.—A share-warrant to bearer is a warrant or certificate under the seal of the company, stating that the bearer of the warrant is entitled to a certain number or amount of fully paid-up shares or stock; coupons for payment of dividends may be annexed to it; delivery of the share-warrant operates as a transfer of the shares or stock. (Comp. Act, 1867, § 27 *et seq.*) It does not seem to have been decided whether share-warrants are negotiable instruments in the full sense, namely, so as to enable a holder with a defective title to give a good title to a *bond fide* transferee for value. No doubt they are within the doctrine of *Goodwin v. Roberts* (1 App. Cas. 476), so that if the owner of a warrant allowed it to remain in another person's possession, he could not recover it from any one who acquired it *bond fide* for value from that person.

SHARE, (when means a moiety). 5 East 501.

— (synonymous with "stock," in act of congress, June 3d, 1873). 46 Tex. 15.

— (in a deed). 3 Stockt. (N. J.) 399.

— (in statute concerning intestates). 12 Mass. 493.

— (in a will). 27 Barb. (N. Y.) 371; 4 Brndf. (N. Y.) 268, 306; 13 N. Y. 98, 102; 1 Wend. (N. Y.) 541; 3 Binn. (Pa.) 489; 5 Id. 480.

SHARE AND INTEREST, (in a deed). 10 Pick. (Mass.) 376.

SHARE AND SHARE ALIKE.—

In equal shares or proportions.

SHARE AND SHARE ALIKE, (create a tenancy in common). 2 Fla. 387.

— (in a will). 3 Md. 190; 4 Mass. 567; 9 Pick. (Mass.) 37; 63 How. (N. Y.) Pr. 312; 14 Wend. (N. Y.) 340; 3 Binn. (Pa.) 489; 3 Desaus. (S. C.) 288; 2 Atk. 122; 1 Barn. & Ad. 944; 1 Barn. & C. 638; 5 Id. 866; 3 Bro. Ch. 64; 5 East 501; 2 Marsh. 9; 1 Meriv. 448; 9 Moo. 310; 2 Ves. 534 n.; 3 Id. 206; 19 Id. 534; 1 Leg. (Pa.) Gaz. 68.

SHARE IN PROFITS, (creates a partnership as to third persons). 4 Paige (N. Y.) 148.

SHARE IN THE PERSONAL ESTATE OF HER HUSBAND, (in a statute). 49 Ill. 110.

SHARE, MY, (a devise of). 5 Mau. & Sel. 408.

SHARE OF SUCH CHILD SO DYING, (in a will). Skin. 339.

SHARE OR SHARES, (in a will). 8 Com. Dig. 486.

SHARED AND DIVIDED BETWEEN THEM, (in a will). 1 Atk. 493.

SHAREHOLDER.—In the strict sense of the term, a shareholder is a person who has agreed to become a member of a corporation or company, and with respect to whom all the required formalities have been gone through (*e. g.* signing of deed of settlement, registration, or the like). A shareholder by estoppel is a person who has acted and been treated as a shareholder, and consequently has the same liabilities as if he were an ordinary shareholder. (Lind. Part. 130) Thus, a person who has acted as a shareholder may be liable for the debts of the company, although he has never been registered as a shareholder, and is, therefore, not a shareholder in the full sense of the word. *Portal v. Emmens*, 1 C. P. D. 201.

SHAREHOLDER, (in a statute). 123 Mass. 375, 377; 1 C. P. D. 201; L. R. 6 Q. B. 297.

SHARES, (scrip receipts are not). 2 Car. & P. 521.

— (in an incorporated company are not chattels). 17 Mass. 240, 243

— (in United States statute). 23 Wis. 655.

— (right of distress under a lease on). 13 Serg. & R. (Pa.) 52.

— (what is an agreement to work on). 15 Wend. (N. Y.) 379.

— (letting land upon, for a single crop does not amount to a lease). 8 Johns. (N. Y.) 151.

— (persons cultivating land on, have an interest in the land). 1 Johns. (N. Y.) 267.

SHARES IN A RAILWAY, (in a will). L. R. 7 H. L. 717.

SHARES ISSUED, (in stamp act). 1 Ex. D. 242, 250.

SHARES OF A CORPORATION, (liability of subscriber for). 10 Mass. 327, 334.

SHARES OF A TURNPIKE COMPANY, (are real estate). 2 Conn. 567.

SHARES OF STOCK, (devise of). 7 Johns. (N. Y.) Ch. 261.

— (how transferred). Ang. & A. Corp. § 564.

SHARPING CORN.—A customary gift of corn which, at every Christmas, the farmers in some parts of England give to their smith for sharpening their plough-irons, harrow-tines, &c. —*Blount*.

SHAW.—A grove or wood; an underwood.

SHAWATORES.—Soldiers.—*Cowell*.

SHAWLS, (are wearing apparel within tariff laws). 16 How. (U. S.) 251.

SHE SWORE A FALSE OATH, AND I CAN PROVE IT, (not actionable). 2 Binn. (Pa.) 60.

SHEADING.—A riding, tithing, or division in the Isle of Man, where the whole island is

divided into six sheadings, in each of which there is a coroner or chief constable appointed by a delivery of a rod at the Tinewald Court or annual convention.—*King Isle of Man* 7.

SHEAVES OF CORN, (in a declaration in trover). 4 Mod. 321.

SHEED, (defined). 5 Cox C. C. 222; 2 Den. C. C. 65; 15 Jur. 90; Temp. & M. 422, 426; 20 L. J. M. C. 103.

— (what is not). 2 Cox C. C. 186.

SHEEP, (in a penal statute). 2 East P. C. 616.

— (indictment for stealing). 4 Car. & P. 216.

SHEEP AND ALL EFFECTS, (in a will). 8 Ch. D. 561.

SHEEP-HEAVES.—Small plots of pasture, in England, often in the middle of the waste of a manor, of which the soil may or may not be in the lord, but the pasture is private property and leased or sold as such. They principally occur in the northern counties (Cooke Incl. 44), and seem to be corporeal hereditaments (Elt. Com. 35), although they are sometimes classed with rights of common, but erroneously, the right being an exclusive right of pasture. See **PASTURE**, § 3.

SHEEP-SILVER.—A service turned into money, which was paid because anciently the tenants used to wash the lord's sheep.

SHEEP-SKIN.—A deed; so called from the parchment it was written on.

SHEEPWALK.—A right of sheepwalk is the same thing as a fold-course (*q. v.*) Elt. Com. 44; Cooke Incl.; Jones v. Richards, 6 Ad. & E. 530.

SHEET, (is a book under copyright law). 11 East 244.

SHELLEY'S CASE.—If land is given to A. for his life, or for any estate of freehold, and by the same gift or conveyance the land is limited either mediately or immediately to his heirs in fee (or in tail), the result is that A. takes an estate in fee (or in tail), and not merely the particular estate first limited to him. Thus, if land is given "to A. for his life, and after his death to his heirs," or "to A. for his life, and after his death to B. for his life, and after his death to the heirs of A.," in either of these cases A. takes an estate in fee-simple: in the first case an estate in fee-simple in possession, and in the second case an estate for life in possession, followed by an estate in fee-simple in remainder expectant on the death of B. A's heirs take nothing, unless he dies intestate and allows the land to go by descent. In technical language, the word "heirs" is here a word of limitation, and not a word of purchase. This rule is called the "rule in *Shelley's Case*," a case (1 Co. 94), in which the subject was much discussed, although the rule itself is of much more ancient date. Wms. Real Prop. 255; 2 Jarm. Wills 332.

SHEPWAY, COURT OF.—A court held before the lord warden of the Cinque Ports.

A writ of error lay from the mayor and jurors of each port to the lord warden in this court, and thence to the Queen's Bench. The civil jurisdiction of the Cinque Ports is abolished by 18 and 19 Vict. c. 48.

SHEREFFE.—The body of the lordship of Cardiff in South Wales, excluding the members of it. Pow. Hist. Wal. 123.

SHERIFF.—

§ 1. In American law.—A county officer, elected by the people, to whom he gives security for the faithful performance of the duties of his office, which are principally to preserve the public peace within his county, arrest malefactors, summon jurors, levy executions, hold judicial sales, serve writs and other process, and perform various other ministerial duties in aid of the courts of record. He is generally paid by fees, and performs many of his duties by deputy.

§ 2. In English law.—The chief officer of the crown in every county in England, appointed by the crown every year. He must hold some land within the county. The duties of sheriffs are very various, including the charge of parliamentary elections, the execution of process issuing from the High Court and the criminal courts, the summoning of jurors and the seizing of escheated lands. (Co. Litt. 168 a; 2 Steph. Com. 623; Stats. 18 and 14 Car. II. c. 21; 3 and 4 Will. IV. c. 99.) Most of his ordinary duties are performed by the under-sheriff and deputy. 2 Steph. Com. 632.

§ 3. Formerly the sheriff had judicial duties to perform as judge of the Sheriff's County Court; but these are practically obsolete. (See COUNTY COURT, p. 307 n.; OUTLAWRY.) He also held a court of record called the "Sheriff's Tourn," twice every year, which had the same functions and jurisdiction as the Court Leet (q. v.); it also has fallen into desuetude. 4 Steph. Com. 321. See BAILIFF; BAILWICK; PRICKING FOR SHERIFFS.

§ 4. In Scotch law.—The chief judge of a county. His civil jurisdiction extends to all personal actions on contract, bond, or obligation, to the greatest extent; and to all possessory actions, as removing, spuilzies, &c.; to all briefs issuing from Chancery, as of inquest, terse, division, tutory, &c.; and generally to all civil matters not specially committed to other courts. He has also a summary jurisdiction in regard to small debts, as well as a criminal jurisdiction. See Bell Dict.; and 1 and 2 Vict. c. 119; 16 and 17 Vict. cc. 80, 92; 17 and 18 Vict. c. 72; 27 and 28 Vict. c. 106.

SHERIFF, (defined). 5 Oreg. 478; Co. Litt. 168 a.

— (in a statute). 2 Gr. (N. J.) 82.

SHERIFF CLERK.—The clerk of the Sheriff's Court in Scotland.

SHERIFF DEPUTE.—In the Scotch law, the principal sheriff of a county, who is also a judge.

SHERIFF-GELD.—A rent formerly paid by a sheriff, and it is prayed that the sheriff in his account may be discharged thereof.—Rot. Parl. 50 Edu. III.

SHERIFF-TOOTH.—A tenure by the service of providing entertainment for the sheriff at his county courts; a common tax, formerly levied for the sheriff's diet.

SHERIFF'S COURT.—See SHERIFF, § 3.

SHERIFF'S COURT IN LONDON.—See CITY OF LONDON COURT.

SHERIFF'S JURY.—A jury summoned for the taking of inquisitions before the sheriff or under-sheriff, on a writ of inquiry.—Burrill.

SHERIFF'S OFFICERS.—Bailiffs who are either bailiffs of hundreds or bound-bailiffs.

SHERIFF'S TOWN, or ROTATION.—A court of record held twice every year, within a month after Easter and Michaelmas, before the sheriff, in different parts of the county, being, indeed, only the turn of the sheriff to keep a court leet in each respective hundred; this, therefore, is the great court leet of the county, as the county court is the court baron, for out of this, for the ease of the sheriff, was taken the court leet, or view of frankpledge (q. v.) See 4 Steph. Com. (7 edit.) 321.

SHERIFFALTY, SHERIFFDOM, SHERIFFSHIP, SHERIFF-WICK, or SERIEVALTY.—The office or jurisdiction of a sheriff.

SHERRERIE.—A word used by the authorities of the Roman church, to specify contemptuously the technical parts of the law, as administered by non-clerical lawyers.—Bacon.

SHEWER.—In the practice of the English High Court, when a view by a jury is ordered, persons are named by the court to show the property to be viewed, and are hence called "shewers." There is usually a shewer on behalf of each party. Arch. Pr. 339 *et seq.* See VIEW.

SHEWING.—In English law, to be quit of attachment in a court, in plaints shewed and not avowed. Obsolete.

SHIFTED LOCATION, (what is not). 10 Serg. & R. (Pa.) 214.

SHIFTED WARRANTS, (surveys made upon, have no validity). 4 Binn. (Pa.) 58.

SHIFTING CLAUSE.—A shifting clause in a settlement, is a clause by which some other mode of devolution is substituted for that primarily prescribed. Examples of shifting clauses are—the ordinary name and arms clause (*q. v.*), and the clause of less frequent occurrence by which a settled estate is destined as the foundation of a second family, in the event of the elder branch becoming otherwise enriched. (3 Dav. Conv. 273.) These shifting clauses take effect under the Statute of Uses. *See* USE.

SHIFTING USE.—A secondary or executory use, which, when executed, operates in derogation of a preceding estate; as land conveyed to the use of A. and his heirs, with proviso that when B. pays a certain sum of money, the estate shall go to the use of C. and his heirs. *See* USE.

SHILLING.—Among the English Saxons passed for 5*d.*; afterwards it represented 16*d.*, and often 20*d.* In the reign of the Conqueror it was of the same denominative value as at this day.—*Domesd.* In modern times the twentieth part of a sovereign.

SHILWIT.—*See* CHILDWIT.

SHIN PLASTERS, SMALL NOTES AND SMALL BILLS, (in a statute). 2 Ind. 483, 485.

SHIP.—

§ 1. A vessel employed in navigation. Under the English Merchant Shipping Act, a vessel cannot be registered as a British ship unless she belongs wholly to British subjects, or to a corporation formed under and subject to the laws of, and having its principal place of business in, the British empire. (Mer. Ship. Act, 1854, § 18.) A British ship is personal property, but, so long as she is on the high seas, she is deemed to be part of the soil of England, (Westl. Pr. Int. Law (2 edit.) 174;) thus, persons born on board a British ship are natural-born British subjects, and the British courts have jurisdiction in respect of crimes committed on the high seas on board British vessels. (*See* Regina v. Keyn, 2 Ex. D. 63.) The laws of the United States are similar to those of England in these respects.

§ 2. In England, the ownership of every registered ship is divided into sixty-four shares, all of which may belong to one person, or they may be divided among several persons; but not more than thirty-two persons can be registered as part-owners of any one ship. (*See* PART-OWNER.) Any part-owner can transfer or

mortgage any or all of the shares held by him; but to do so he must comply with the statutory provisions on these heads, (as to which, *see* BILL OF SALE, p. 3 *n.*; MORTGAGE, § 17,) as ships are not within the ordinary rules governing the assignment and hypothecation of chattels. As to the hypothecation of ships, *see* BOTTOMRY; HYPOTHECATION; NECESSARIES, § 4; RESPONDENTIA. As to the employment of ships, *see* AFFREIGHTMENT; BILL OF LADING; CHARTER-PARTY; DEMURRAGE; FREIGHT; INSURANCE, § 3; LAY DAYS; LOSS; MANAGING OWNER; MERCHANT SHIPPING; PILOTAGE; POLICY OF INSURANCE; RUNNING DAYS; SEAMEN; SEAWORTHINESS; SHIP'S HUSBAND; TRANSIRE. For other matters relating to ships, *see* ACTION, § 12 *et seq.*; ADMIRAL; ADMIRALTY; AVERAGE; COLLISION; LIMITATION OF LIABILITY, §§ 2, 3; SALVAGE; WRECK.

SHIP, (a canal boat is not). 5 Hill (N. Y.) 34.
—— (an open boat is not). 5 Mas. (U. S.)

120.

—— (a lighter or gabbert is not). 1 Bli. 573.

—— (in a statute). 17 Barb. (N. Y.) 523; L. R. 6 Q. B. 280; Wilberf. Stat. L. 299.

SHIP AND FREIGHT, (in a statute). 1 Hagg. Adm. 109.

SHIP AND GOODS, (in a policy of insurance). 8 East 375.

SHIP AND VESSEL, (in laws of 1850, ch. 72, p. 81). 1 E. D. Smith (N. Y.) 588.

SHIP OR VESSEL, (in a statute). 1 Brock. (U. S.) 423; 1 Holmes (U. S.) 467; 3 Wall. Jr. (U. S.) 53.

SHIP'S BILL, (defined). 14 Wall. (U. S.) 93.

SHIP'S HUSBAND.—A person to whom the owner or part owners of a ship delegate the management of her while she is in the home port. He is usually the general agent of the owners in regard to all affairs of the ship in the home port, such as repairs, equipment, hiring officers and crew, affreightment, &c., but not insurance; sometimes his authority is limited to specific things. *For* Mer. Sh. 47. *See* AGENT; MANAGING OWNER.

SHIP'S HUSBAND, (defined). 4 Daly (N. Y.) 318; Abb. Sh. 140.

SHIP'S PAPERS.—Documents required for the manifestation of the property of the ship and cargo, &c.

They are of two sorts: (1) Those required by the law of a particular country.

as the certificate of registry, license, charter-party, bills of lading and of health, required by the law of England to be on board all British ships; (2) those required by the law of nations to be on board neutral ships, to vindicate their title to that character; they are the passport, sea-brief, or sea-letter, proofs of property, the muster-roll, or *rôle d'équipage*; the charter-party, the bills of lading and invoices, the log-book or ship's journal, and the bill of health. 1 Marsh. Ins. c. 9, § 6.

SHIP-BREAKING.—In the Scotch law, the offense of breaking into a ship.

SHIP-BROKER.—A broker who transacts business relating to vessels and their employment between the owners and merchants who charter vessels or send goods in them under contracts of affreightment.

SHIP-CHANDLERY, (defined). 1 Wall. Jr. (U. S.) 359, 368.

SHIP-MONEY.—An imposition formerly levied on port-towns and other places for fitting out ships; revived by Charles I., and abolished in the same reign. 17 Car. I. c. 14.

SHIP-WRECK.—The breaking or shattering of a ship or vessel, either by driving ashore, or on rocks and shoals in the mid-seas, or by the mere force of the winds and waves in tempests. (2 Arn. Ins. § 296.)—*Burrill*.

SHIPMASTER.—The person in command of a merchant vessel, appointed by the ship-owner, and whose acts in the management of the vessel render both himself (usually) and also the ship-owner liable to passengers and shippers of goods. See MASTER OF A SHIP.

SHIPPED, (in a contract). 2 App. Cas. 455.

SHIPPED AS ABOVE, (in a bill of lading). 8 Ben. (U. S.) 3, 4.

SHIPPER.—The owner of goods who entrusts them on board a vessel for delivery abroad, by charter party or otherwise.

SHIPPING.—Ships of any kind intended for navigation. Also, relating to ships; as in the expressions, shipping interest, shipping affairs, shipping business, shipping concerns. Also, the act of

putting on board a ship or vessel, or sometimes that of receiving on board a ship or vessel. The law of shipping is that branch of the general law which relates to vessels; including such subjects as their registration, building, tonnage, ownership, and national character; also, the employment and rights of the seamen on board of them, and the powers and duties of their masters and commanders; also, ship-brokers and ship-agents, pilots, &c.; also, the sale or transfer and mortgage of merchant vessels; also, freight, charter-parties, demurrage, salvage, towage, collisions, &c.—*Abbott*.

SHIPPING ARTICLES.—An agreement in writing between the master and the seamen engaged to serve on board a ship, specifying the voyage or term for which they are shipped, the rate of wages, and when they are to render themselves on board. 3 Kent Com. 177.

SHIPS, (policy, on, does not include seamen's wages and provisions). 2 Binn. (Pa.) 558.

— (in a statute). 17 Johns. (N. Y.) 54; 1 Wend. (N. Y.) 557.

SHIPS OR VESSELS, (in a statute). 5 Wend. (N. Y.) 504.

SHIRE.—A part or portion of the kingdom of England; called also a "county" [*comitatus*]. King Alfred first divided England into *satrapies*, now called "shires;" shires into *centuries*, now called "hundreds;" and these again into *decennae*, now called "tithings."—*Leg. Alfred*. See Brompton 956.

SHIRE, (etymology of). Co. Litt. 168 a.

SHIRE CLERK.—He that keeps the county court.

SHIRE-MAN, or **SOYRE-MAN.**—Anciently judge of the county, by whom trials for land, &c., were determined before the Conquest.

SHIRE-MOTE.—The assize of the shire, or the assembly of the people, was so called by the Saxons. It was nearly, if not exactly, the same as the *Seyr-gemote*, and in most respects corresponded with what were afterwards called the "county courts."—*Brown*.

SHIRE-REVE.—A sheriff (*q. v.*)

SHOEMAKING, (is a trade). 3 Mod. 330.

SHOLE, (defined). 1 Holmes (U. S.) 167, 168.

SHOOTING.—

§ 1. In English law, the right of shooting over land is a variety of the right of sporting (*q. v.*)

§ 2 In criminal law, shooting, or attempting to shoot, a person, with intent to commit murder, or to maim, disfigure, or do grievous bodily harm to him, or to prevent the lawful apprehension or detainer of any person, is felony, punishable with penal servitude for life (maximum). (Stat. 24 and 25 Vict. c. 100, §§ 14, 18.) Shooting at vessels or boats belonging to the navy or in the service of the revenue, or at any officer employed in the prevention of smuggling, is felony, punishable with penal servitude for any term not less than five years, or imprisonment not exceeding three years. Customs Laws Consolidation Act, 1876, § 193.

SHOP, (defined). 34 L. J. M. C. 76, 80.

— (what is). 1 Car. & K. 173.

— (synonymous with "store"). 18 Conn. 432; 14 Gray (Mass.) 376; 15 Id. 197.

— (not synonymous with "store"). 53 Ala. 481; 19 N. H. 135.

— (a banking-house is, within act concerning crimes and punishments). 24 Conn. 57.

— (cabin of a vessel is not). 5 Day (Conn.) 131, 133; 1 Root (Conn.) 63.

— (in a bond). 124 Mass. 151.

— (grant of). 1 P. Wms. 80.

SHOPA.—In old records, a shop.—*Cowell*.

SHORE.—Land on the margin of the sea, or a lake, or river; that space of land which is alternately covered and left dry by the rising and falling of the tide; the space between high and low-water marks.

SHORE, (defined). 26 Col. 336; 34 Conn. 424; 40 Id. 382, 400; 6 Mass. 435; 20 Wend. (N. Y.) 151.

— (in commissioners' return). 123 Mass. 359, 362.

— (title to). 1 Zab. (N. J.) 157; 3 Id. 624, 633; 23 Tex. 349.

— (in a deed). 4 Hill (N. Y.) 369, 375, 380.

SHORT CAUSE.—In the English Chancery Division, when the hearing of an action (whether on motion for judgment, further consideration, or otherwise,) involves no question of difficulty, and is not likely to take up much time in argument, or is such that the subject-matter of it would authorize the court to make an order as of course, or is one in which all parties consent to the order or judgment, it may, on a certificate by the plaintiff's counsel that it is fit to be heard as a short cause, be marked as "short" in the registrar's cause book (Dan. Ch. Pr. 836), instead of being set down in the ordinary cause list. One day in each week is appointed for hearing short causes, and as each is disposed of in from five minutes to a quarter of an hour, an action which has been marked "short" may be brought to a hearing with great dispatch. A similar practice prevails in some of the United States.

SHORT ENTRY.—This takes place when a bill or note, not due, has been sent to a bank for collection, and an entry of it

is made in the customer's bank book, stating the amount in an inner column, and carrying it into the accounts between the parties when it has been paid. *See* ENTERING SHORT.

SHORT ENTRY, (defined). 11 R. I. 119, 121.

SHORT-FORD.—The ancient custom of the city of Exeter is, when the lord of the fee cannot be answered rent due to him, and no distress can be levied, he is to come to the tenement and there take a stone, or some other dead thing, and bring it before the mayor and bailiffs. This he must do seven quarter days successively, and if on the seventh the lord is not satisfied, then the tenant shall be adjudged to the lord to hold the same a year and a day; and forthwith proclamation is to be made in the court, that if any man claim any title to the tenement he must appear within a year and a day, and satisfy the lord. If no appearance be made, and the rent not paid, the lord comes again to the court and prays that the tenement be adjudged to him in his demesne as of fee, which is done, and the lord has it to him and his heirs. This custom is called "short-ford." *Izraeli Antiq. Exet.* 48. *See Cowell*.

A like custom in London by the ancient statute of Gavet, attributed to 10 Edw. II., is called *forshot* or *forshoke*.—*Wharton*.

SHORT NOTICE OF TRIAL, (equivalent to "four days' notice"). 3 Barn. & Ad. 381; 4 Bli. 599; 2 Crompt. & J. 184; 1 Moo. & Sc. 423; 2 Tyrw. 345; 3 Id. 490.

SHORT TIME, (forbearance for, is not a good consideration). 1 Cro. 19.

SHORTEN LIFE, DISORDER TENDING TO, (in a declaration on an insurance policy). 4 Taunt. 763.

SHORTHAND-WRITERS' NOTES of the evidence or arguments on the trial or hearing of an action are frequently taken for future use on a motion for new trial or an appeal. As a general rule, the party taking them has to bear the expense himself. (*Kelly v. Byles*, 13 Ch. D. 632; *Duchess of Westminster Ore Co.*, 10 Ch. D. 307.) But in a special case (as where the evidence is exceptionally voluminous) the costs will be allowed. *Bigsby v. Dickenson*, 4 Ch. D. 24.

SHOULD OR MIGHT, (in a submission to arbitration). 3 Tyrw. 272.

SNOVEL-PLOUGH, (in an indictment). 3 Brev. (S. C.) 5.

SHOW CAUSE.—When an order, rule, decree or the like, has been made *nisi*, the person who appears before the court and contends that it should not be allowed to take effect, is said to show cause

against it. *See* ABSOLUTE; DECREE, § 3; NISI; ORDER, § 3; RULE, § 3.

SHOWS, PUBLIC, (when indictable). 3 Day (Conn.) 103, 107.

SHRIEVALTY.—The office of sheriff; the period of that office.

SHRIEVO.—A corruption of sheriff (*q. v.*)

SHUT OFF THE GAS, (in printed regulations of gas company). 117 Mass. 533.

Si a jure discedas vagus eris, et erunt omnia omnibus incerta (Co. Litt. 227): If you depart from the law you will wander, and all things will be uncertain to everybody.

SI ACTIO.—The conclusion of a plea to an action when the defendant demands judgment, if the plaintiff ought to have his action, &c. Obsolete.

Si aliquid ex solemnibus deficiat, cum æquitas poscit, subveniendum est (1 Kent Com. 157): If any one of certain required forms be wanting, when equity requires, it will be aided.

Si assuetis mederi possis, nova non sunt tentanda (10 Co. 142b): If you can be relieved by accustomed remedies, new ones should not be tried.

SI FECERIT TE SECURUM.—A species of original writ, so called from the words of the writ, which directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security to effectually prosecute his claim.

SI ITA EST.—If it be so. Emphatic words in the old writ of *mandamus* to a judge, commanding him, if the fact alleged be truly stated (*si ita est*), to affix his seal to a bill of exceptions. Marshall, C. J., 5 Pet. (U. S.) 192.

SI NON OMNES, WRIT OF.—A writ on association of justices, by which, if all in commission cannot meet at the day assigned, it is allowed that two or more of them may finish the business.—*F. N. B.* 186; *Reg. Orig.* 202. And after the writ of association, it is usual to make out a writ of *si non omnes*, addressed to the first justices, and also to those who are associated with them, which, reciting the purport of the two former commissions, commands the justices, that if all of them cannot conveniently be present, such a number of them may proceed, &c.—*F. N. B.* 111.

Si plures conditiones ascriptæ fuerunt donationi conjunctim, omnibus esse parendum; et ad veritatem copulative requiritur quod utraque pars sit vera: si divisim, cuilibet vel alteri eorum satis est obtemperare; et in disjunctivis sufficit alteram partem

esse veram (Co. Litt. 225): If several conditions have been conjunctively annexed to a gift, the whole of them must be complied with; and with respect to their truth, if they be joint, it is necessary that every part be true; if the conditions are separate, it is sufficient to comply with either one or other of them; and being disjunctive, that one or the other be true.

SI PRIUS.—If before. Formal words in ancient writs for summoning juries.

Si quid universitati debetur singulis non debetur nec quod debet universalitas singuli debent (D. 3, 4, 7): If anything be owing to an entire body, it is not owing to the individual members; nor do the individuals owe that which is owing by the entire body.

Si quidem in nomine, cognomine, prænومine legatarii testator erraverit, cum de persona constat, nihilominus valet legatum (Just Inst. 1. 2, t. 20, s. 29): Although a testator may have mistaken the *nomen*, *cognomen* or *prænomen* of a legatee, yet if it be certain who is the person meant, the legacy is valid.

SI QUIS.—If any one. An advertisement; a notification.

Si quis custos fraudem pupillo fecerit, a tutela removendus est (Jenk. Cent. 39): If a guardian do fraud to his ward, he shall be removed from his guardianship.

Si quis prægnantem uxorem reliquit, non videtur sine liberis decessisse (Reg. Jur. Civ.): If a man leave his wife pregnant, he shall not be considered to have died without children.

Si quis unum percusserit, cum alium percutere vellet, in feloniam tenetur (3 Inst. 51): If a man kill one, meaning to kill another, he is held guilty of felony.

SI RECOGNOSCAT.—A writ that, according to the old books, lay for a creditor against his debtor, who had acknowledged before the sheriff in the county court that he owed his creditor such a sum received of him.—*O. N. B.* 68.

Si suggestio non sit vera, literæ patentēs vacuæ sunt (10 Co. 113): If the suggestion be not true the letters-patent are void.

SIB.—Akin.

Sic enim debere quem meliorem agrum suum facere, ne vicini deteriorem faciat (8 Kent Com. 441): Every one ought so to improve his land as not to injure his neighbor's.

Sic interpretandum est ut verba accipiantur cum effectu (3 Inst. 80): [*A statute*] is to be so interpreted that the words may be taken with effect.

Sic utere tuo ut alienum non lædas: So use your own property as not to injure that of other persons. A maxim indicating the chief limitation on the enjoyment of an absolute owner, as to which see OWNERSHIP, § 3.

SIC UTERE TUO UT ALIENUM NON LÆDAS, (applied). 57 Ala. 583.

SICA, or SIOHA.—A ditch. 2 Mon. Angl. 130.

SICHE.—A little current of water, which is dry in summer; a water furrow or gutter.—*Cowell.*

SICIUS.—A sort of money current among the ancient English, of the value of 2d.

SICKNESS, (defined). 9 Daly (N. Y.) 291.

— (insanity is, within rules of the friendly society). L. R. 8 Q. B. 295.

SICUT ALIAS.—As at another time, or heretofore. This was a second writ sent out when the first was not executed. See *Cowell.*

Sicut natura nil facit per saltum, ita nec lex (Co. Litt. 238): In the same way as nature does nothing by a bound, so neither does the law.

SIDE-BAR RULE.—See RULE, § 4.

SIDELINGS.—Meres between or on the sides of ridges of arable land.—*Cowell.*

SIDES OF A RAILROAD, (in a statute). 51 Mo. 138.

SIDES-MEN, SYNODS-MEN, or QUEST-MEN.—Persons who were formerly appointed in large parishes to assist the church wardens in inquiring into the manners of inordinate livers, and in presenting offenders at visitations.—*Cowell.* In some large parishes this office still exists as the office of assistant to the church wardens.—*Wharton.*

SIDEWALK, (in a covenant). 2 Abb. (N. Y.) N. Cas. 230.

SIENS.—Scions, or descendants.

SIGHT, (bill of exchange payable after). 1 Hawks (N. C.) 195; 1 McCord (S. C.) 322; 6 T. R. 200.

SIGIL.—Seal; signature.

SIGILLUM.—A seal.

SIGLA.—A sail.—*Leg. Eth.* c. 24.

SIGN—SIGNATURE.—*Signare* in Roman law meant both to seal and (although more rarely) to subscribe. Dirksen Man. Lat. s. v.

§ 1. In the primary sense of the word, a person signs a document when he writes or marks something on it in token of his intention to be bound by its contents. In

the case of an ordinary person, signature is commonly performed by his subscribing his name to the document, and hence "signature" is frequently used as equivalent to "subscription," but any mark is sufficient if it shows an intention to be bound by the document; illiterate people commonly sign by making a cross. (*Baker v. Dening*, 8 Ad. & E. 94. See MARKSMAN.) The provisions of the Statute of Frauds, which require a contract for the sale of goods in certain cases to be signed by the party to be bound, have been held to be satisfied where the party writes the memorandum forming the contract on a piece of paper on which his name is printed. Chit. Cont. 362.

§ 2. The only signature which a corporation aggregate can make is by its seal. (See *Gooch v. Goodman*, 2 Ad. & E. 580; *In re General Estates Co.*, L. R. 3 Ch. 758; *In re Imperial Land Co.*, L. R. 11 Eq. 478; *Crouch v. Crédit Foncier*, L. R. 8 Q. B. 374.) In practice, ordinary contracts by a trading company are generally signed by an agent or officer of the company on its behalf. Poll. Cont. (2 edit.) 130 *et seq.* See SEAL.

SIGN, (in statute of frauds). 26 Wend. (N. Y.) 341.

SIGN AND INDORSE NOTES AT THE BANK, (power to). 7 Wheel. Am. C. L. 396.

SIGN MANUAL.—In English law, the signature or "royal hand" of the queen. It is called the "sign manual" because it is the actual signature of the crown, as distinguished from the operation of signing documents by the signet (*q. v.*) (2 Inst. 555.) Warrants for passing grants under the great seal are signed with the sign manual as an authority to the secretary of State to affix the privy seal to the warrant. Stat. 14 and 15 Vict. c. 82. See GREAT SEAL; PRIVY SEAL; WARRANT.

SIGNATORIUS ANNULUS.—In the civil law, a signet-ring; a seal-ring.

SIGNATURE.—See SIGN.

SIGNATURE, (defined). 12 Pet. (U. S.) 161; 28 Ind. 19; 4 Park. (N. Y.) Cr. 56.

— (includes mark). 56 Ala. 516.

— (made by another, by direction). 56 Me. 390.

— (in a statute). 125 Mass. 446; 5 Hill (N. Y.) 468; 12 Johns. (N. Y.) 106; 14 Id. 484; 6 N. Y. 9, 13; L. R. 3 C. P. 31.

SIGNED AND SEALED, (in a written instrument). 2 Ld. Raym. 1536.

SIGNED BY THE PARTY TO BE CHARGED THEREWITH, (in statute of frauds). 3 Johns. (N. Y.) Cas. 60.

SIGNED, SEALED AND DELIVERED, (in marine insurance policy). L. R. 2 H. L. 286.

SIGNET.—In English law, a seal with which certain documents are sealed by the principal secretary of state on behalf of the queen. Formerly, every bill for letters-patent, after being signed with the sign manual (*q. v.*), was sealed with the signet, as a warrant or authority to the proper officer to affix the privy seal or great seal (as the case might be) to the grant. But the necessity of affixing the signet in such cases has been abolished (Stat. 14 and 15 Vict. c. 83) and the use of the signet seems practically to have ceased. Coke says, however, that a writ of *ne erant regno* may be issued under the signet, "for this is but a signification of the king's commandment, and nothing passeth from him." 2 Inst. 556.

SIGNIFICAVIT is used in two senses, in English ecclesiastical law: (1) to denote the bishop's certificate on which a writ *de excommunicato* or *contumace capiendo* is issued; and (2) the writ itself. (Phillim. Ecc. L. 1404; Hudson v. Tooth, 2 P. D. 125.) The former seems to be the original and proper use of the word. The certificate is directed to the queen in Chancery, and specifies the offense for which it is desired to imprison the offender. See Stat. 53 Geo. III. c. 127. See, also, *DE CONTUMACE CAPIENDO*.

SIGNING, (what constitutes). 12 Pet. (U. S.) 161; 2 Bos. & P. 239.

—— (what is not). 3 Greenl. (Me.) 227.

—— (may be by printing or stamping). 2 Mau. & Sel. 286, 289.

—— (is included in making a promissory note). 8 Mod. 307.

—— (an agreement). 3 Atk. 503, 504.

—— (a lease). 1 Cox Ch. 219.

—— (a will). 3 Har. & M. (Md.) 476; 55 Mo. 330; Doug. 244 n.; 1 Str. 493; 2 Id. 764; 1 Ves. & B. 362; Love. Wills 159.

—— (in statute of frauds). 4 Wheat. (U. S.) 94; 12 Johns. (N. Y.) 102; 4 Johns. (N. Y.) Ch. 659; 3 Wend. (N. Y.) 118; 16 Id. 28; 6 East 307; 1 Eq. Cas. Abr. 403; 1 Esp. 190; 2 Mau. & Sel. 286; 3 Meriv. 2; 1 P. Wms. 770; 1 Russ. & M. 625; 1 Vern. 110; 7 Ves. 265; 8 Id. 185; 9 Id. 234, 249; 1 Wils. 313; 1 Chit. Gen. Pr. 357.

—— (in statute of wills). 7 Halst. (N. J.) 70; 2 Harr. (N. J.) 125; 24 Wend. (N. Y.) 327; 6 Serg. & R. (Pa.) 496; 17 Ves. 459; 18 Id. 183.

SIGNING JUDGMENT.—In the English Queen's Bench Division, when judgment is given in an action after the trial, the successful party draws up two forms of judgment in accordance with the certificate of the associate (see *CERTIFICATE*, p. 185 n. (1)), and takes them to the proper officer, who signs one form of judgment and files it; after stamping the other with the seal of the court, he returns it to the party. Hence the process is called "signing judgment," though the proper term is "entering." (Rules of Court, xli.; Arch. Pr. 462. See *ENTER*.) The process of signing judgment under an order, or on default, is similar.

SIGNING JUDGMENT, (as used in § 420 of the code). 28 Ind. 142.

SIGNUM.—A cross prefixed as a sign of assent and approbation to a charter or deed, used by the Saxons.

Silent leges inter arma (4 Inst. 70): Laws are silent amidst arms.

SILENTIARIUS.—One of the Privy Council; also, an usher, who sees good rule and silence kept in court.

SILK GOWN.—Is the professional robe worn by those barristers who have been appointed of the number of Her Majesty's counsel, and is the distinctive badge of queen's counsel, as the stuff gown is of the "juniors" who have not attained that dignity. Accordingly, when a barrister is raised to the degree of queen's counsel, he is said to have "got a silk gown." The right to confer this dignity resides with the Lord Chancellor, who disposes of this branch of his patronage according to the talents, the practice, the seniority, and the general merits of the applicant. See *QUEEN'S COUNSEL*.

SILK VEILS, (in duty act). 13 Blatchf. (U. S.) 194.

SILKS, (what are not). 1 Car. & M. 45.

SILVA CÆDUA.—Wood under twenty years' growth.

SIMILAR, (in counterfeit law). 42 Me. 392; 8 Mass. 69; 4 Pick. (Mass.) 233; 7 Id. 137.

SIMILAR JURISDICTION, (in the constitution of Virginia). 21 Gratt. (Va.) 822, 826.

SIMILAR OFFENSE, (in a statute). 127 Mass. 452, 454.

SIMILITER.—In like manner. Formerly when an issue of fact was tendered, the words were as follows: "And of this the defendant puts himself upon the country;" or thus, "and this the plaintiff prays may be inquired of by the country;" the issue and form of trial were then both accepted on the other side (unless there appeared grounds for demurrer, by the words following: "and the plaintiff (or the defendant, as the case may be,) doth the like," which latter words were called the *similiter*. After the passing of the English C. L. P. Act, 1852, the joinder of issue under § 79 of that act superseded the *similiter*. (See *ISSUE*.) The want of a *similiter* by the prosecutor in criminal cases is cured, in England, by 7 and 8 Geo. IV. c. 64, § 20.

SIMILITER, (defined). Gould Pl. ch. vi., § 20. — (what is). 1 Cow. (N. Y.) 213.

SIMILITUDE, (in counterfeit law). 42 Me. 392.

Similitudo legalis est, casuum diversorum inter se collatorum similis ratio; quod in uno similitum valet, valebit in altero. Dissimilium, dissimilis est ratio (Co. Litt. 191): Legal similarity is a similar reason which governs

various cases when compared with each other, for what avails in one of similar cases will avail in the other. Of things dissimilar, the reason is dissimilar.

Simonia est voluntas sive desiderium emendi vel vendendi spiritualia vel spiritualibus adhærentia. Contractus ex turpi causa et contra bonos mores (Hob. 167): Simony is the will or desire of buying or selling spiritualities, or things pertaining thereto. It is a contract founded on a bad cause, and against morality.

SIMONIAL—SIMONY.—"Simony, according to the canonists, is defined to be a deliberate act, or a premeditated will and desire of selling such things as are spiritual, or of anything annexed unto spirituals, by giving something of a temporal nature for the purchase thereof" (Ayliffe, cited Phillim. Ecc. L. 1107.) Thus, it is simony for any one to purchase the next presentation to a living when it is vacant; and it is simony for a clergyman to purchase a next presentation even when the church is full; but, with these exceptions, the buying and selling of advowsons and next presentations is not simoniacal. (2 Steph. Com. 721.) All simoniacal contracts, presentations, collations, &c., are void; and the persons guilty of the offense are subject to penalties. See Phillim. 1102 *et seq.*; Stats. 31 Eliz. c. 6; 1 W. & M. c. 16; 13 Anne c. 11. See **NEXT PRESENTATION**; **RESIGNATION BONDS**.

SIMONY, (defined). 3 Inst. 156; 2 Bl. Com. 278.

— (what constitutes). 1 Fonb. Eq. 233 n.; 5 Taunt. 741.

SIMPLE.—Pure; unmixed; unqualified; composed of the fewest elements.

SIMPLE AVERAGE.—Particular average (*q. v.*)

SIMPLE CONTRACT.—The word "simple," as applied to contracts, is used in contradistinction to contracts under seal. The former species of contracts are called "simple," because they subsist by reason simply of the agreement of the parties; and the latter species are called "special," being in writing and sealed with the seal of the party in testimony of his solemn and special assent to the subject-matter of the contract. See **CONTRACTS**, § 1.

SIMPLE CONTRACT DEBT.—One where the contract upon which the obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal

promise. (2 Bl. Com. 466.) By 32 and 33 Vict. c. 46, § 1, it is provided that in the administration of the estate of every person who shall die on or after the 1st day of January, 1870, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt; but all the creditors of such persons, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding. Provided always, that that act shall not prejudice or affect any lien, charge, or other security which any creditor may hold or be entitled to for the payment of his debt. See **DEBT**, § 5.

SIMPLE DEPOSIT.—A deposit made, according to the civil law, by one or more persons having a common interest.

SIMPLE HOMAGE.—See **HOMAGE**, § 3.

SIMPLE LARCENY.—Theft, without circumstances of aggravation. (See 4 Steph. Com. (7 edit.) 120, 334.) If a man commit a simple larceny in one county, and carry the goods with him into another, he may be indicted in either, for the law considers this as a taking in both.

SIMPLE OBLIGATION.—In the civil law, an obligation which does not depend for its execution upon any event provided for by the parties, or which is not agreed to become void on the happening of any such event. La. Civ. Code, Art. 2015.

SIMPLE SALE.—See **SALE**, § 2.

SIMPLE TRUST.—Where property is vested in one person upon trust for another, and the nature of the trust, not being qualified by the settlor, is left to the construction of law. In this case the *cestui que trust* has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the legal estate as the *cestui que trust directus*. Lew. Trusts 21.

SIMPLE WARRANTICE.—In the Scotch law, an obligation to warrant or secure from all subsequent and future deeds of the grantor.

SIMPLEX.—Simple; single; pure; unqualified.

SIMPLEX BENEFICIUM.—A minor dignity in a cathedral or collegiate church, or any other ecclesiastical benefice, as distinguished from a cure of souls. It may, therefore, be held with any parochial cure, without coming under the prohibitions against pluralities.

Simplex commendatio non obligat: A man does not compromise himself by praising what he wishes to sell in vague or abstract terms.

SIMPLEX DICTUM.—Simple averment; assertion without proof.

SIMPLEX JUSTICIARIUS.—A style formerly used for any *puisne* judge who was not chief in any court.—*Cowell*.

SIMPLEX LOQUELA.—Simple speech; the mere declaration or *plant* in an action.

SIMPLEX OBLIGATIO.—A single unconditional bond.

Simplicitas est legibus amica; et nimia subtilitas in jure reprobatur (4 Co. 8): Simplicity is favorable to the laws: and too much subtlety in law is to be reprobated.

SIMPLICITER.—Simply, directly, immediately, absolutely, or without any circumstances of qualification.

SIMUL CUM.—Together with. Words used in indictments and declarations in trespass against several persons, some of whom are known and others unknown. Thus, "A. B., together with others unknown."

SIMULATED FACT.—A fabricated fact. See **FABRICATED EVIDENCE**.

SIMULATED and CONCEALED INSANITY.—There is no disease, says Zacchias, more easily feigned, or more difficult of detection, than this. Great men of ancient times, to elude danger, have pretended it; as David, Ulysses, Solon and Brutus. On the other hand, Dr. Ray declares that, "those who have been longest acquainted with the manners of the insane, and whose practical acquaintance with the disease furnishes the most satisfactory guarantee of the correctness of their opinions, assure us that insanity is not easily feigned; and that no attempt at imposition can long escape detection." Georget does not believe "that

a person who has not made the insane a subject of study can simulate madness so as to deceive a physician well acquainted with the disease."—*Des Maladies Mentales*, 60. Mr. Haslam declares that "to sustain the character of a paroxysm of active insanity would require a continuity of exertion beyond the power of a sane person."—*Med. Jurisp. of Insan.* 322. Dr. Conolly affirms, "that he can hardly imagine a case which would be proof against an efficient system of observation."—*Inquiry concerning Indic. Insan.* 467. Another writer, while admitting that attempts to deceive are sometimes successful, on account of the imperfect knowledge of the operations of the mind in health and disease possessed by medical men in general, observes, however, that when we consider the "very peculiar complex phenomena which characterize true madness, and reflect on the general ignorance of those who attempt to imitate them, we have no right to expect such a finished picture as could impose on persons well acquainted with the real disease."—*Cyc. Prac. Med.*, art. "*Feigned Diseases*." With such authority before us, to urge as an objection against the free admission of insanity, in excuse for crime, the extreme difficulty of detecting attempts to feign it, can no longer be anything more than the plea of ignorance or indolence. The only effect such difficulty should have on the minds of those who are to form their opinions by the evidence they hear, should be to impress them with the necessity of an intimate acquaintance with insanity on the part of the medical witness, and convince them that, without this, the testimony of the physician is little better than another's. As to the tests to detect simulated insanity, consult *Beck Med. Jur.* 447.

Among us, the choice of the means for establishing the existence of insanity, when concealed, is left to individual sagacity. This no doubt is sufficient, where great acquaintance with insanity suggests the course best adapted to each case; but the majority of medical men will feel the need of some system of proceeding that will simplify their inquiries, and render them more efficient. The French arrange their means into three general divisions, which are made use of in succession, when the

rest fail of its object. They are—(1) the interrogatory; (2) the continued observation; (3) the inquest.

(1) *The interrogatory* embraces only those means of observation which are applicable on a personal interview with the patient. After learning generally his moral and intellectual character, his education, and habits of living, the duration and nature of his mental delusion, and the state of his relations to others; and after observing the expression of his countenance, his demeanor and appearance, a direct examination of his case may be entered upon.

(2) *The continued observation*, systematically continued for some time, may establish the fact of insanity in doubtful cases, after personal interviews have failed. Opportunities should be demanded for visiting the patient; for watching him at times when he supposes himself unobserved; and for exercising a surveillance over his conduct and conversation. Those about him should be enjoined to watch his movements; and he should often, but cautiously, be led to speak of the motives of those who are anxious to prove his insanity. It often happens, too, that those who are most successful in concealing every indication of a disordered mind in their conversation, will betray themselves the moment they commit their thoughts to paper.

(3) *The inquest*. When the above means fail, our inquiries must take a wider range, and be directed to the previous history of the patient, as may be known by the testimony of friends and relations and those who have been connected with him in business, or had any other good opportunity of becoming acquainted with his mental condition. "The inquest," says Georget, "consists in collecting information respecting the patient's condition before and after the presumed disease, and the causes suspected to have impaired his mind. For this purpose, we consult his writings, and recur to the testimony of those who have been about him and conversed with him; who have been able to observe him closely, and to witness his insane actions, and his irrational discourse. We should be particularly careful, however, to require of witnesses *facts rather than opinions*. We should ascertain whether madness be a disease of the family; whether he have

already evinced singularity in his moral and intellectual character, or exaltation of any kind; whether he have been exposed to the influence of powerful causes, such as chagrins, severe and repeated crosses, reverses of fortune, &c.; whether, without real motive, he has manifested any change of his habits, tastes, or affections; in short, we should inquire into all those circumstances which so frequently precede the development" (*Des Maladies Mentales* 57; *Ray Med. Jur. Ins. c. 16. See MENTAL ALIENATION.*)—*Wharton*.

SIMULATIO LATENS.—A species of feigned disease, in which disease is actually present, but where the symptoms are falsely aggravated, and greater sickness is pretended than really exists. *Beck Med. Jur. 3.*

SIMULATION.—In the civil law, misrepresentation or concealment of the truth.

SINDERESIS.—A natural power of the soul, set in the highest part thereof, moving and stirring it to good, and abhorring evil. "And therefore *sinderesis* never sinneth nor erreth. And this *sinderesis* our Lord put in man, to the intent that the order of things should be observed. And therefore *sinderesis* is called by some men the 'law of reason,' for it ministereth the principles of the law of reason, the which be in every man by nature, in that he is a reasonable creature." *Doct. & S. 39.*

SINE.—Without. The initial word of several Latin phrases.

SINE ANIMO REVERTENDI.—Without the intention of returning.

SINE ASSENSU CAPITALI.—Without the assent of the chapter. An abolished writ where a bishop, dean, prebendary, or master of an hospital, aliened the lands holden in right of his bishopric, deanery, house, &c., without the assent of the chapter or fraternity, in which case his successor should have this writ.—*L. N. B. 195.*

SINE CONSIDERATIONE CURIE.—Without the judgment of the court.

SINE DIE.—Without day. When judgment was given for the defendant in an action, the phrase "*eat inde sine die*" (let him go thereof without day) meant that he was discharged or dismissed out of court. *See EAT INDE SINE DIE.*

SINE PROLE (often written *s. p.*)—Without issue.

SINECURE.—

§ 1. An office entailing upon the incumbent the performance of little or no duty other than that of drawing his pay.

§ 2. In former times the rector of an advowson had power, with the proper consent, to entitle (*i. e.* appoint) a vicar to officiate under him, so that two persons were instituted to the same church. By degrees, the rectors got themselves excused from residence, and devolved the whole spiritual cure upon the vicars. In such a case the rectory became merely nominal, without cure of souls (*sine cura*), and was hence called a "sinecure." Provision for the suppression of sinecure rectories is contained in the Stat. 3 and 4 Vict. c. 113. Phillim. Ecc. L. 504; 2 Steph. Com. 683.

SINGING SCHOOL, ("any district school" in act providing a penalty for the disturbance of, embraces). 26 Conn. 607.

SINGLE BILL.—*See* BILL SINGLE.

SINGLE BOND.—A deed whereby the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to the obligee at a day named.

SINGLE COMBAT, TRIAL BY.—*See* BATTLE.

SINGLE ENTRY.—In bookkeeping, an entry made to charge or to credit an individual or thing, as distinguished from double entry, which is an entry of both the debit and credit accounts of a transaction. *See* DOUBLE ENTRY.

SINGLE ESCHEAT.—This occurs when all a person's movables fall to the crown as a casualty, because of his being declared rebel. *See* FORFEITURE.

SINGLE MAN, (in settlement act). 7 Wall. (U. S.) 219.

SINGLE POINT, (in pleading). Gould Pl. ch. vii., § 51.

SINGLE TENEMENT, (what is). 80 Pa. St. 59.

SINGLE WOMAN, (in bastardy act). Wilberf. Stat. L. 236, 237.

SINGULAR.—One only; individual. By the 13 and 14 Vict. c. 21, § 4, it is enacted that words in acts of parliament importing the singular shall include the plural, and the plural the singular, unless the contrary is expressly provided. The same rule prevails in most, if not all, of the States of the Union.

SINGULAR SUCCESSOR.—A purchaser is so termed in the Scotch law, in contradistinction to the heir of a landed proprietor, who succeeds to the whole heritage by regular title, of succession or universal representation, whereas the purchaser acquires right solely by the single title acquired by the disposition of the former proprietor.—*Bell Dict.*

SINKING FUND.—The surplus revenue of the government beyond the actual expenditure, which is directed to be applied towards the payment of the interest, and reduction of the principal of the national debt.

SIPESSOCUA.—A franchise, liberty, or hundred.

SISE.—Corrupted from assize.

SIST.—In the Scotch law, a stay of proceedings; an order for a stay of proceedings.—*Bell Dict. voc. Advocacion.*

SISTER, (defined). 61 How. (N. Y.) Pr. 48, 52. SISTERS, (in a will). 79 Pa. St. 432; 13 East 526.

SITE, (in mechanics' lien law). 7 Vr. (N. J.) 163.

SITHOUNDMAM.—The high constable of a hundred.

SITTING OF THE COURT, (in a statute). 5 Mass. 197.

SITTING-ROOMS, (in covenant in a lease). 4 Man. & R. 302.

SITTINGS.—A court is said to sit when its members are present for the transaction of business. In the English High Court the sittings are designated either according to the nature of the business, or the period at which the sittings are held. Thus, in the practice of the Queen's Bench Division, we speak of the sittings for trials, or at *Nisi Prius*, or in banc, or at the assizes, &c. *See* the various titles.

With reference to the period at which they are held, the sittings of the Supreme Court of Judicature are four in number, namely, the Hilary Sittings, from January 11th to the Wednesday before Easter; the Easter Sittings, from the Tuesday after Easter week to the Friday before Whit Sunday; the Trinity Sittings, from the Tuesday after Whitsun week to August 8th, and the Michaelmas Sittings, from November 2d to December 21st. (Rules of Court, lxi. 1.) Formerly the sittings of the Courts of Chancery and Common Law were regulated by the terms (*q. v.*), and hence were distinguished as sittings in and sittings after term.

SITTINGS, (signifies "term"). 1 Oreg. 303, 311.

SITTINGS AFTER TERM.—Sittings in banc after term were held by authority of the 1 and 2 Vict. c. 32. The courts were at liberty to transact business at their sittings as in term time, but the custom was to dispose only of cases standing for argument or judgment.

SITTINGS IN BANC.—Sittings of the judges on the benches of their respective courts at Westminster, at which they decided matters of law and transacted other judicial business, as distinguished from *Nisi Prius* sittings, at

which matters of fact were tried. 1 Chit. Arch. Pr. (12 edit.) 176.

SITTINGS IN CAMERA.—See CAMERA; IN CAMERA.

SITTINGS IN LONDON AND WESTMINSTER.—London and Westminster are not comprised within any circuit, but Courts of *Nisi Prius* are held there for the same purposes before the judges of the High Court of Justice, at what are called the "London and Westminster Sittings." Criminal cases are tried at the Central Criminal Court.

SITUATE, (in a statute). 4 Ind. 86, 89.

SITUS.—Situation; location.

SIX ACTS, THE.—The acts passed in 1819, for the pacification of England, are so called. They, in effect, prohibited the training of persons to arms; authorized general searches and seizure of arms; prohibited meetings of more than fifty persons for the discussion of public grievances; repressed with heavy penalties and confiscation seditious and blasphemous libels; and checked pamphleteering by extending the newspaper stamp duty to political pamphlets. —*Brown*.

SIX CLERKS.—"In the time of Richard II., the master of the rolls had six clerks to assist him in keeping the records, and in making the requisite entries. They had an office . . . called the "six clerks' office," in which all bills, answers, and other pleadings and depositions taken by commission, were filed; and . . . all decrees, dismissals and other records were there kept." (Spence Eq. 366.) Each clerk was called a "six clerk." The office was practically a sinecure. The six clerks were abolished by Stat. 5 and 6 Vict. c. 103, and their duties transferred to the records and writs clerks, and clerk of enrollments (*q. v.*) Second Rep. Legal Dep. Comm. 43.

SIX HANDKERCHIEFS, (in an indictment). 1 Moo. C. C. 25.

SIX MONTHS, (when means calendar months). Cro. Jac. 167.

SIX OR NINE MONTHS, (in loan). L. R. 10 Q. B. 264.

SIXHINDI.—Servants of the same nature as rodknights (*q. v.*)—*Ans. Inst. Eng.*

SKELETON BILL.—One drawn, indorsed, or accepted in blank.

SKELLA.—A bell.—*Spel. Gloss.*

SKILLED WITNESSES.—Witnesses who are allowed to give evidence on matters of opinion and abstract fact. Such evidence can only be given by persons of professional knowledge on the subject in hand; such as medicine, surgery, handwriting, mechanics, chemistry, for-

eign law, &c.; but not moral philosophy or political economy. See EXPERTS.

SKINS, (in a policy of insurance). 7 Cow. (N. Y.) 202.

SKYVINAGE, or SKEVINAGE.—The precincts of Calais. 27 Hen. IV. c. 2.

SLADE.—A long, flat and narrow piece or strip of ground.—*Cowell*.

SLANDER.—

§ 1. **Slander per se: by reason of special damage.**—A false and malicious statement concerning a person made by word of mouth is a slander, giving rise to a right of action for damages: (1) If it imputes to the plaintiff the commission of a crime for which a corporal punishment may be inflicted, or the having some contagious disorder which may exclude him from society, or has reference to his trade, office, or profession, and is calculated to injure him therein; or (2) if it has caused him special damage. The first kind is called "slander *per se*," and the latter kind is called "slander by reason of special damage." Thus, if one man falsely and maliciously says of another that he is a thief or a swindler, or a leper, or that, being a lawyer, he is a rogue, this is slander *per se*; if, on the other hand, a man imputes unchastity to a woman, this is not actionable, unless it produces special damage, namely, an injury to the material interests of the person slandered. More words of abuse are not actionable.

§ 2. **Slander of quality of goods.**—In the class of slander on a person with reference to his occupation may also be included what is called slander of quality of goods, namely, a false and malicious statement throwing discredit on the commodity in which the party deals; as where a man said of a trader: "His bath nothing but rotten goods in his shop." Folk. Sl. & L. 125, citing Cro. Car. 570.

§ 3. A statement in itself defamatory is not actionable if it is privileged. Broom Com. L. 759; Folk. Sl. & L.; Flood Sl. & L. *passim*; Riding v. Smith, 1 Ex. D. 91. See PRIVILEGE; also APOLOGY; DEFAMATION; JUSTIFICATION; LIBEL; MALICE.

§ 4. **Slander of title** is a false and malicious statement, whether by word of mouth or in writing, with reference to a person's

title to some right or property belonging to him, as where a person alleges that the plaintiff has a defective title to land, or to a patent. (Broom, *ubi supra*; Flood 224 *et seq.*) It seems that slander of title is not actionable unless special damage results from it. (See *Haddan v. Lott*, 15 Com. B. 411; *Wren v. Weild*, L. R. 4 Q. B. 780.) A written slander of title is sometimes called a "libel in the nature of slander of title." *Hart v. Hall*, 2 C. P. D. 146.

SLANDER, (defined). 2 Kent Com. 16.
 — (when action of will not lie). 15 Wend. (N. Y.) 232.
 — (pleading in). 23 Wend. (N. Y.) 422.
SLATE-ROCK, (defined). 1 Holmes (U. S.) 167, 168.

SLAVE.—A bond-man; one who is bound to serve for life.—*Burrill*. One who is by law deprived of his liberty for life, and becomes the property of another.—*Bouvier*. A person who is wholly subject to the will of another; one who has no freedom of action, but whose person and services are wholly under the control of another.—*Webster*.

SLAVE TRADING.—

§ 1. Slave trading is a felony, punishable, in England, with penal servitude for fourteen years, or imprisonment with hard labor for five years.

§ 2. Piratical slave trading is the offense ("piracy, felony and robbery") of carrying away or assisting in carrying away any person from any part of her majesty's dominions, for the purpose of his being dealt with as a slave. It is punishable with penal servitude for life. *Steph. Cr. Dig.* 68; *Russ. Cr. & M.* 338; *Stat. 5 Geo. IV. c. 113*.

SLAVERY.—That civil relation in which one man has absolute power over the life, fortune, and liberty of another.

SLEDGE.—A hurdle to draw traitors to execution. 1 Hale P. C. 82.

SLEEPING RENT.—An expression frequently used in coal mine leases and agreements for same. It would seem to signify a fixed rent as distinguished from a rent varying with the amount of coals gotten. (See *Jones v. Shears*, 6 M. & W. 429.)—*Brown*.

SLIGHT CARE, (defined). 17 Cal. 97; 1 Allen (Mass.) 9, 15; 3 *Id.* 38; 8 Gray (Mass.) 123, 131; 6 Duer (N. Y.) 633; 3 E. D. Smith (N. Y.) 98; 20 N. Y. 65; 8 Ohio St. 570, 581.

SLIGHT NEGLIGENCE, (defined). 43 Wis. 509.
 — (distinguished from "slight want of ordinary care"). 47 Wis. 422.

SLIP.—In negotiations for a policy of insurance, in England, the agreement is in practice concluded between the parties by a memorandum called the "slip," containing the terms of the proposed insurance, and initiated by the underwriters. (A specimen of a slip is given in *Fisher v. Liverpool Marine Insurance Co.*, L. R. 9 Q. B. 420.) Although by 30 Vict. c. 23, § 7, which requires every contract of marine insurance to be expressed in a policy, the slip is not itself enforceable, it is for many other purposes of legal effect; thus, where a slip has been initiated, the assured need not communicate to the insurer facts which afterwards come to his knowledge material to the risk insured against, and the non-disclosure of those facts will not vitiate the policy afterwards executed, although it would do so if there were no slip. *Cory v. Patton*, L. R. 7 Q. B. 304; 9 Q. B. 577; *Poll. Cont.* 562.

SLIP, (defined). 1 Cal. (N. Y.) 543, 544.
 — (in a statute). 11 N. Y. 115; 3 Sandf. (N. Y.) 487.

SLIPPA.—A stirrup. There is a tenure of land in Cambridgeshire by holding the sovereign's stirrup.

SLOUGH SILVER.—A rent paid to the castle of Wigmore in lieu of certain days' work in harvest, heretofore reserved to the lord from his tenants.—*Cowell*.

SMAKA.—A small vessel; a smack.—*Cowell*.

SMALL DEBTS COURTS.—The several county courts established by 9 and 10 Vict. c. 95, for the purpose of bringing justice home to every man's door.

SMALL TITHES.—All personal and mixed tithes, and also hops, flax, saffrons, potatoes, and sometimes, by custom, wood. Otherwise called "privy tithes." 2 *Steph. Com.* (7 edit.) 726.

SMART MONEY.—Vindictive, or exemplary damages. Damages in excess of the value of a thing sued for, given in cases of gross misconduct on the part of a defendant. See **DAMAGES**, § 4.

SMOKE FARTHINGs. — Pentecostals (*q. v.*)

SMOKE SILVER.—A modus of sixpence in lieu of tithe-wood.—*Cowell*.

SMUGGLE, (defined). 13 Blatchf. (U. S.) 178.

SMUGGLING.—The offense of importing or exporting prohibited goods, or of importing or exporting goods without paying the duties imposed on them. Goods so imported are liable to confiscation, and the offenders are liable to forfeiture. Per-

sons assembling together for the purpose of smuggling are liable to imprisonment. See SHOOTING, § 2.

SNOTTERING SILVER.—A small duty which was paid by servile tenants in Wylegh to the abbot of Colchester.—*Cowell*.

So AS, (in a submission to arbitration). 2 Cro. 400.

So GAVE, (in a will). Penn. (N. J.) 603.

So LONG, (in a lease). Freem. 25.

So LONG AS WOOD GROWS AND WATER RUNS, (in a deed creates a fee-simple). 1 Vt. 303.

So MADE, (in a statute). Penn. (N. J.) 193.

So PAID, (in a deed). 5 Barn. & Ald. 606, 610.

So SPECIFICALLY DEvised, (in a will). L. R. 6 H. L. 24.

So TO DO, (equivalent to to do the act). Burr. 2083.

SOBER AND TEMPERATE, (in a life policy). 27 Int. Rev. Rec. 288.

SOC, SOK, or SOKA.—Jurisdiction; a power or privilege to administer justice and execute the laws; also a shire, circuit, or territory.—*Cowell*.

SOCA.—A seigniorship or lordship, enfranchised by the king, with liberty of holding a court of his *soc-men* or *socagers*, i. e. his tenants.

SOCAGE.—**NORMAN-FRENCH:** *socage*, from *socmen*, a freeman holding land in villenage as part of the ancient demesnes of the crown, with the privilege (Anglo Saxon, *socni*) of his services being certain, and of his not being ousted from the land so long as he performed them. (Britt. 212 b compared with 165 a; J. N. B. 14 b; Spel. Glos s. v. *Socmannus*; Schmid, *Ges. gl. s. v. Socage*; 2 Bl. Com. 80;) afterwards socage came to mean any tenure with certain services. (Nichols' Britton, ii. 5, n. (a).) Bracton, Littleton and other old writers, derive socage from the French *soc*, a plough-share, because much land was anciently held by the service of ploughing the lord's land for so many days in the year. (Litt. § 119; Co. Litt. 86 a.) Some modern writers on the other hand, incline to the derivation from the Anglo-Saxon *soc*, or rather *socn*, in the sense of "jurisdiction," because tenants in socage were the free suitors of the lord's courts. Wms. Seis. 20.

§ 1. A kind of tenure, distinguished from the tenure of frankalmoin (*q. v.*) by its services being certain and of a temporal nature, and from the tenure of knight's service (*q. v.*), by its services having been originally agricultural. See SERVICE, § 3 et seq.; TENURE.

§ 2. **Free socage.**—Socage was originally of two kinds, free socage and villein socage, according as the services were free or base. Thus, where a man held land by fealty and a fixed rent, the tenure was free socage. (Litt. § 117.) Free socage was of two kinds, socage in capite and common socage (Co. Litt. 77 a), but the former has been abolished. (Stat. 12 Car. II. c. 24. See IN CAPITE.) Common free socage is the modern ordinary freehold tenure. (See FREEHOLD, § 4.) It has in theory the incidents of fealty, relief and wardship; but in practice they rarely occur. (See INCIDENT.) The tenures of petty serjeanty, burgage and gavelkind (*q. v.*) are varieties of free socage.

§ 3. **Villein socage.**—Villein socage is now represented by tenure in ancient demesne (*q. v.*) It differed from ordinary villenage in its services being certain. See VILLENAGE.

SOCAGE, (tenure in). Co. Litt. 87 b.

SOCAGE, GUARDIAN IN, (when a mother is). 6 Paige (N. Y.) 391.

_____ (a father cannot be). 7 Cow. (N. Y.)

36. _____ (has an interest in the land). Penn.

(N. J.) 287; South. (N. J.) 462.

_____ (may maintain ejectment). 17 Wend.

4 N. Y. 75.

_____ (may maintain trespass). 5 Johns.

(N. Y.) 66.

_____ (gains a settlement by residing on the

ward's estate forty days). 10 East 491.

SOCAGER.—A tenant by socage.

Socagium idem est quod servitium socæ; et soca, idem est quod caruca (Co. Litt. 86): Socage is the same as service of the soc; and soc is the same thing as a plough.

SOCER.—The father of one's wife; a father-in-law.

SOCIALISM.—Absolute equality in the distribution of the physical means of life and enjoyment. It is on the continent employed in a larger sense; not necessarily implying communism, or the entire abolition of private property, but applied to any system which requires that the land and the instruments of production should be the property, not of individuals, but of communities, or associations, or of the government. 1 Mill Pol. Ec. 248.

SOCIDA.—In the civil law, a contract or hiring, upon condition that the bailee take upon himself the risk of the loss of the thing hired.

SOCIETAS.—In the Roman law, the partnership of English law, and admitted of as many (and even more) varieties of internal arrangement. One species, called the *leonina societas* (*q. v.*), alone was illegal. Each partner was required to show only reasonable diligence, and was, therefore, not liable to his copartners excepting for *crassa negligentia*.

SOCIETAS LEONINA.—In the civil law, that kind of society or partnership by which the entire profits belong to some of the partners in exclusion of the rest. So called in allusion to the fable of the lion, who, having entered into partnership with other animals for the purpose of hunting, appropriated all the prey to himself. It was void. For the several *societates*, see Sand. Inst. (5 edit.) 366.

SOCIETE ANONYME.—An association where the liability of all the partners is limited. It had, in England, until lately no other name than that of "chartered company," meaning

thereby, a joint stock company whose shareholders, by a charter from the crown, or a special enactment of the legislature, stood exempted from any liability for the debts of the concern, beyond the amount of their subscriptions. 2 Mill Pol. Ec. 485.

SOCIETE EN COMMANDITE.—See COMMANDITE.

SOCIETY, (distinguished from church). 71 Me. 483.

Socii mei socius meus socius non est (D. 50, 17, 47, 1): The partner of my partner is not my partner.

SOCIUS.—In the civil law partner.

SOCMAN.—A socager.

SOCMANRY.—Free tenure by socage.

SOCNA.—A privilege, liberty, or franchise. —*Cowell*.

SOCOME.—A custom of grinding corn at the lord's mill.—*Cowell*. Bond-socome is where the tenants are bound to it.—*Blount*.

SODOMY.—The crime against nature. 4 Steph. Com. (7 edit.) 92; Beck Med. Jur. 119; Tayl. Med. Jur. c. 51.

SODOMY, (defined). 1 East P. C. 480; 1 Russ. Cr. & M. 698.

SOIL.—Soil in law denotes the land, together with whatever is in it, under it, or upon or above it. In a narrower sense, the soil is the land without the minerals. And again, the soil is sometimes distinguished from the herbage or vesture of the land. Soil is the *solum* referred to in the maxim *cujus est solum, ejus est usque ad cælum et deinde usque ad centrum*.—*Brown*. See SUPERFICIES.

SOIL, (distinguished from land). 26 Beav. 612.

SOIT DROIT FAIT EL PARTE.—Let right be done to the party. The allowance by the king of a petition of right (q. v.)

SOIT FAIT COMME IL EST DESIRE.—Let it be as it is desired. The royal assent to private acts of parliament.

SOJOURNER, (who is). 4 Hen. & M. (Va.) 98. — (in a statute). 8 Mod. 50.

SOJOURNING, (defined). 1 Wheat. (U. S.) 5. — (what is not). 10 East 29.

SOKEMANRIES.—Lands and tenements which were not held by knight-service, nor by grand serjeantry, nor by petit, but by simple ser-

vices; being, as it were, lands enfranchised by the king or his predecessors from their ancient demesne. Their tenants were *sokemans*.

SOKEMANS.—Tenants of socage-lands. 3 Bl. Com. 100.

SOKE-REEVE.—The lord's rent gatherer in the soca.—*Cowell*.

SOLAR DAY.—That period of time which begins at sunrise and ends at sunset. Co. Litt. 135 a.

SOLAR MONTH.—A calendar month (q. v.)

SOLATIUM.—See SEDUCTION.

SOLD, (when construed "sold or otherwise disposed of"). 7 Otto (U. S.) 219.

— (when gas is considered). 5 Wall. (U. S.) 720.

— (in an agreement to sell). 6 Robt. (N. Y.) 104, 109.

— (in a deed). 74 N. C. 593.

— (in act for the adjustment of land claims). 7 Otto (U. S.) 204.

SOLD AND DELIVERED, (implies a contract). 2 T. R. 30.

— (averment in pleading). 6 Com. Dig. 56.

SOLD, BUT NOT REMOVED, (in fire policy). 45 N. Y. 606; 6 Am. Rep. 146.

SOLD, GOODS, (what is the best evidence of). 3 Whart. (Pa.) 75.

SOLD NOTE.—See BOUGHT AND SOLD NOTES.

SOLD, USED OR IMPROVED, (in tax act). 12 Mass. 161, 164.

SOLDIER, (in a statute). 102 Mass. 130.

— (a gunner in the artillery is). 1 Str. 7.

— (a sergeant is). 1 W. Bl. 29.

SOLDIERS' WILLS.—See NUNCUPATIVE WILLS.

SOLE.—Not married; single; alone; also separate, and apart.

SOLE, (in a will). L. R. 4 H. L. 288.

SOLE AND SEPARATE USE, (in a will). 1 Bunb. 187; 1 Phil. 352; 2 Vern. 659.

SOLE CORPORATION.—One person and his successors, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had; as the sovereign, bishop, parson, &c. 1 Steph. Com. (7 edit.) 358; 3 Id. 4.

SOLE EXECUTORS, (in a will). L. R. 1 P. & D. 628.

SOLE NEXT OF KIN, (gains a settlement by residing forty days in the parish of the intestate). 8 East 411.

SOLE TENANT.—He that holds lands by his own right only, without any other person being joined with him.

SOLE USE, (synonymous with "separate use"). 1 Madd. 207.

— (in a trust deed). 1 Whart. (Pa.) 23.
— (in a will). L. R. 2 Eq. 177.

SOLE USE AND BENEFIT, (equivalent to "separate use and benefit"). Younge 562.

SOLE USE AND DISPOSAL, (in a will). 17 Ch. D. 794.

SOLE USE, FOR HER, (in a will). 7 Metc. (Mass.) 243.

SOLE USE, TO HER, (in a conveyance). 2 MacArth. (U. S.) 60.

SOLEMN.—Formal; in regular form.

SOLEMN FORM.—See PROBATE, § 4.

SOLEMN WAR.—A war made in form by public declaration; a war solemnly declared by one State against another.

SOLEMNIZE MARRIAGES, (in a statute). 6 Hallst. (N. J.) 19.

SOLICIT, (in a pleading). 12 Abb. (N. Y.) Pr. N. s. 187, 190.

— (in a criminal statute). 7 Q. B. D. 258.

SOLICITATION.—It is an indictable offense to solicit and incite another to commit a felony, although no felony be in fact committed. 2 East 5.

SOLICITOR.—

§ 1. In English law.—A person employed to conduct the prosecution or defense of an action or other legal proceeding on behalf of another, or to advise him on legal questions, or to frame documents intended to have a legal operation, or generally to assist him in matters affecting his legal position. To enable a person to practice as a solicitor, he must serve a term as an articled clerk (*q. v.*), pass certain examinations (see EXAMINATION, § 6), be admitted and enrolled as a solicitor of the Supreme Court of Judicature (see ROLLS, § 5), and take out a yearly certificate (granted by the commissioners of inland revenue) authorizing him to practice. 3 Steph. Com. 215; Stats. 6 and 7 Vict. c. 73; 23 and 24 Vict. c. 127; 33 and 34 Vict. c. 28; 34 Vict. c. 18; 35 and 36 Vict. c. 81; Solicitors Act, 1875; *Id.* 1877.

§ 2. Solicitors are not only bound to use reasonable diligence and skill in transacting the business of their clients, but they also occupy a fiduciary position towards their clients, so that a dealing (such as a purchase of property) between a solicitor and his client, is always liable to be impugned unless the client was able to protect himself, or had independent advice. (See FIDUCIARY; FRAUD, § 2. UNDUE INFLUENCE.) On

the other hand, a solicitor is entitled to remuneration for his services, which he may recover not only by action (subject to the provisions of the Solicitors Acts, see TAXATION), but also by a lien on the property of his client to the extent of his costs, or by obtaining a declaration of charge on it. See CHARGE, § 5; LIEN, § 4.

§ 3. Solicitors are also considered as officers of the courts in which they practice, and consequently the courts have always exercised summary jurisdiction over them. Thus, if a solicitor is guilty of gross professional misconduct, the court will order his name to be struck off the roll of practicing solicitors; and if a solicitor institutes frivolous or vexatious proceedings in the name of a client, he may be ordered to pay the costs of them personally. Dan. Ch. Pr. 1713.

§ 4. Solicitors are subject to special provisions as to the delivery and taxation of their bills of costs against their clients. As to which, see TAXATION. (Dan. Ch. Pr. 1726.) As to agreements for future remuneration, see the Attorneys and Solicitors Act, 1870, and the Solicitors Remuneration Act, 1881; Ward v. Eyre, 15 Ch. D. 130.

§ 5. In American law.—A lawyer who practices in a Court of Chancery is called a "solicitor," but the word seems to coincide in meaning with "attorney" (*q. v.*)

SOLICITOR, (defined). 14 Nev. 365.

SOLICITOR-GENERAL.—In England, one of the principal counsel of the crown. (See QUEEN'S COUNSEL.) His functions, however, are political as well as legal, for he is almost invariably a member of the House of Commons, where he acts as the deputy or assistant of the attorney-general (*q. v.*)

SOLICITOR OF THE TREASURY.—An officer of the United States attached to the department of justice, having general charge of the law business appertaining to the treasury.

SOLICITOR TO THE SUITORS FUND.—An officer of the English Court of Chancery, who is appointed in certain cases guardian *ad litem*. See Sm. Ch. Pr. 101.

SOLIDATUM.—Absolute right or property.

SOLIDUM.—To be bound *in solido* is to be bound for the whole debt jointly and severally with others; but where each is bound for his share, they are said to be bound *pro rata parte*.

SOLIDUS LEGALIS.—A coin equal to 13s. 4d. of the present standard. 4 Steph. Com. (7 edit.) 119 n.

SOLINUS TERRÆ.—A ploughland.—Cowell.

Solo cedit, quicquid solo plantatur (Office of Exec. 57): What is planted in the soil belongs to the soil.

SOLUM ITALICUM.—See **SOLUM PROVINCIALE**.

SOLUM PROVINCIALE.—In Roman law, the *solum italicum* (an extension of the old *Ager Romanus*) admitted full ownership, and of the application to it of *usucapio*; whereas the *solum provinciale* (an extension of the old *Ager Publicus*) admitted of a possessory title only, and of *longi temporis possessio* only. Justinian abolished all distinctions between the two, sinking the *italicum* to the level of the *provinciale*.—*Brown*.

Solum rex hoc non facere potest, quod non potest injuste agere (11 Co. 72): This alone the king cannot do, he cannot act unjustly.

Solus Deus facit hæredem, non homo (Co. Litt. 5): God alone makes the heir, not man.

A common maxim that only God can make the heir-at-law of a deceased person, and that man can make the devisee only. The maxim means, that circumstances not entirely within the control of a person concur in constituting his heir-at-law at the date of his death.

SOLUTIO.—In the civil law, a discharge; the performance of that to which a person is bound.

SOLUTIO INDEBITI.—In the civil law, payment, by mistake, of money not due. Inst. 3, 23, 6.

Solutio pretii emptionis loco habetur (Jenk. Cent. 56): The payment of the price is held to be in place of a purchase, *i. e.* amounts to a purchase.

SOLUTIONE FEODI MILITIS PARLIAMENTI, or FEODI BURGENSIS PARLIAMENTI.—Old writs whereby knights of the shire and burgesses might have recovered their wages or allowance if it had been refused. 35 Hen. VIII. c. 11.

SOLVENCY.—The state of present ability to pay all that one owes.

SOLVENCY, (defined). 13 Wend. (N. Y.) 378. — (does not at all times mean ability to pay). 4 Robt. (N. Y.) 426.

SOLVENDO ESSE.—To be in a state of solvency, *i. e.* able to pay.

SOLVENT.—A solvent person is one who is able to pay all his just debts in full out of his own present means.

SOLVENT, (defined). 4 Hill (N. Y.) 652.
SOLVENT CREDITS, (in tax act). 54 Ala. 499.
SOLVENT DEBTOR, (defined). 53 Barb. (N. Y.) 547; 36 How. (N. Y.) Pr. 487, 505.
SOLVENT PARTNER, (joint property of). 10 Ves. 100.

SOLVERE PENAS.—To pay the penalty

SOLVIT AD DIEM.—A plea in an action of debt, on bond, &c., that the money was paid at the day appointed. 1 Selw. N. P. (1st edit.) 512.

SOLVIT ANTE DIEM.—A plea that the money was paid before the day appointed.

SOLVIT POST DIEM.—A plea that the money was paid after the day appointed. 1 Selw. N. P. (13 edit.) 513.

SOME OF THE BEST OF MY LINEN, (bequest of). 2 P. Wms. 387.

SOME OTHER GOOD CAUSE, (in bankruptcy act). 7 Biss. (U. S.) 280.

SOME WRITING, (in a statute). 65 Me. 500.

SOMERSETT'S CASE.—A celebrated case decided in 1771-72, by the Court of King's Bench, and affirming the extinction of villenage slavery in England, and that no new slavery had been, or could be, introduced into England; and that a slave touching English soil cannot afterwards be sent out of the country against his will, or otherwise than (like free-born persons) by due course of law.

SOMNAMBULISM.—Whether this condition is anything more than a co-operation of the voluntary muscles with the thoughts which occupy the mind during sleep, is not settled by physiologists. Not only is locomotion enjoyed, as the etymology of the term signifies, but the voluntary muscles are capable of executing motions of the most delicate kind. There is a form of this affection called *ecstasis*, or "cataleptic somnambulism," from its being conjoined with a kind of catalepsy, in which the walking and other active employments are replaced by what appears to be a deep quiet sleep, the patient conversing with fluency and spirit, and exercising the mental faculties with activity and acuteness. Somnambulism may incapacitate a person from the performance of his duties, and so impair the validity of his contracts. By rendering him troublesome, mischievous, and dangerous, it furnishes good grounds for annulling contracts of service, whether it existed previously and was concealed, or had made its appearance later. Whether it should be considered a sufficient defense of breach of promise of marriage, is a question which hardly admits of an answer. Hoffbauer suggests as a reason for not regarding the criminal actions of the somnambulist with indulgence, that they have originated, if not in premeditation, at least in the deep and deliberate attention which

the mind has given to the subject when awake. Foderé, by a similar logic, holds that the acts of a somnambulist are more independent than others; being the free and unconstrained expression of waking thoughts and designs, and therefore not excusable. He seems to have forgotten, observes Dr. Ray (Med. Jur. Ins.), that by no human laws are men responsible for their secret thoughts, but only for their words and acts.—*Wharton*.

SON.—(1) A male child, or direct male descendant. (2) His.

SON, (a bastard is not). 1 Atk. 410.

—— (in a deed). 3 Wend. (N. Y.) 521.

—— (in a will). 5 Mass. 535; 11 Johns. (N. Y.) 351; 23 Wend. (N. Y.) 523; 1 Serg. & R. (Pa.) 155; 3 Atk. 737; 2 Barn. & C. 520, 533; 3 Burr. 1626.

SONS AND DAUGHTERS, (in a will). 2 Desaus. (S. C.) 123 n.

—— (does not include illegitimate). 3 Anstr. 684.

SON ASSAULT DEMESNE.—His own assault. The name given to that plea or defense by which a person charged with an assault justifies himself by saying that the plaintiff or prosecutor assaulted him first, and that the assault complained of was committed in self-defense. Underh. Torts 121; 1 Russ. Cr. 963.

SON, ELDEST, (in a will). 3 Swanst. 323, 336.

SON-IN-LAW.—The husband of one's daughter.

SONTAGE.—A tax of forty shillings anciently laid upon every knight's fee.—*Cowell*.

SOON, (equivalent to "reasonable time"). 14 Kan. 223.

—— (in a promise to pay). 17 Wend. (N. Y.) 419.

SOON AS POSSIBLE, (construed). 4 Q. B. D. 670.

—— (in a policy of insurance). 10 Pet. (U. S.) 513.

—— (in a will). 6 Ves. 529.

SORCERY.—*See* CONJURATION.

SOREHON, or SORN.—An arbitrary exaction, formerly existing in Scotland and Ireland. Whenever a chieftain had a mind to revel, he came down among the tenants with his followers by way of contempt called "*Gillwit-fitts*," and lived on free quarters. *See Bell Dict.*

SORTITES.—A form of argument which consists in consolidating several syllogisms (*see* SYLLOGISM), in which the subject of the minor

premise is the same, so as to suppress the *conclusion* in every syllogism but the last, and the *minor premise* in every syllogism but the first.—*Wharton*.

SORS.—Principal; to distinguish it from interest.—*Cowell*.

SORTITIO.—In the civil law, a casting of lots. *Sortitio judicium*, a drawing of judges, on criminal trials, similar to the modern practice of drawing a jury. 3 Bl. Com. 366.

SOTHSAGA, or SOTHSAGE.—History.—*Cowell*.

SOUL, FOR THE GOOD OF MY, (in a will). Dyer 331 a.

SOUL-SCOT.—A mortuary. 2 Steph. Com. (7 edit.) 741.

SOUND.—An action which is brought to recover damages is said to "sound in damages," as opposed to an action for debt (3 Steph. Com. 570), or for specific performance.

SOUND, (applies to condition only). 35 How. (N. Y.) Pr. 376; 6 Robt. (N. Y.) 42.

—— (in a warranty of a horse). 9 Mees. & W. 668, 670.

SOUND AND HEALTHY, (in a warranty). 13 Ired. (N. C.) L. 356.

SOUND DISCRETION, (what is). 2 Wash. (Va.) 98.

SOUND IN MIND, (defined). South. (N. J.) 456.

SOUND MIND.—That state of a man's mind which enables him to reason and come to a judgment upon ordinary subjects like other rational men.—*Bouvier*. *See* SANITY.

SOUND MIND, (defined). 2 Harr. (Del.) 375, 379; 74 Ill. 33; 58 Ind. 538.

SOUNDNESS, (in bill of sale of slave). 10 Johns. (N. Y.) 484.

SOUTH, (in a deed). 8 Allen (Mass.) 424.

SOUTH SEA-FUND.—The produce of the taxes appropriated to pay the interest of such part of the English national debt as was advanced by the South Sea Company and its annuitants. The holders of South Sea annuities have been paid off, or have received other stock in lieu thereof. 2 Steph. Com. (7 edit.) 578.

SOVEREIGN.—(1) A chief or supreme person; the supreme government. Also, a piece of English money of the value of twenty shillings.

SOVEREIGN POWER, or SOVEREIGNTY.—That power in a State to which none other is superior.

SOVEREIGN POWER, (defined). 1 Bl. Com. 49.

SOVEREIGN STATES.—States whose subjects or citizens are in the habit of obedience to them, and which are not themselves subject to any other (or paramount) State in any respect. The State is said to be semi-sovereign only, and not sovereign, when in any respect or respects it is liable to be controlled (like certain of the States in India) by a paramount government (*e. g.* by the British Empire).—*Brown*.

SOVEREIGNTY, (defined). 17 Cal. 199, 207.

SOVERTIE.—In the Scotch law, surety.—*Skene Verb. Sig.*

SOWLEGROVE.—February, so called in South Wales.—*Cowell*.

SOWMING AND ROWMING.—The apportioning or placing of cattle on a common, according to the respective rights of various parties interested. *See Bell Dict.*

SOWNE.—Such writs as are leviable.—*Cowell*.

SPACE OF TWO HOURS, FOR THE, (equivalent to "until after the expiration of two hours"). 1 Alc. & N. 385.

SPADARIUS.—A sword-bearer.—*Blount*.

SPADO.—In the civil law, an eunuch; an impotent man.

SPARSIM.—Dispersedly; here and there.

SPATÆ PLACITUM.—A court for the speedy execution of justice upon military delinquents.—*Cowell*.

SPAWN OF OYSTERS, (equivalent to "oyster spat"). 12 Ad. & E. 13, 21.

SPEAKER.—

§ 1. In American law.—The presiding officer in the house of representatives of the United States, and in the more popular branches of the several State legislatures. His duties and powers are similar to most of those of the speaker of the English House of Commons, *infra*, § 2.

§ 2. Speaker of the House of Commons.—This officer is the organ or spokesman of the Commons; in modern times he is more occupied in presiding over the deliberations of the house than in delivering speeches on their behalf. Amongst the duties of the speaker are the following: To read to the sovereign petitions or addresses from the Commons, and to

deliver in the royal presence, whether at the palace or in the House of Lords, such speeches as are usually made on behalf of the Commons; to manage, in the name of the house, where counsel, witnesses, or prisoners are at the bar; to reprimand persons who have incurred the displeasure of the house; to issue warrants of committal or release for breaches of privilege; to communicate in writing with any parties, when so instructed by the house; to exercise vigilance in reference to private bills, especially with a view to protect property, or the rights of individuals, from encroachment or injury, to express the thanks or approbation of the Commons to distinguished personages; to control and regulate the subordinate officers of the house; to entertain the members at dinner in succession at stated periods; to adjourn the house at four o'clock if forty members be not present; to appoint tellers on divisions. The speaker abstains from debating, unless in committee of the whole house. As chairman of the house, his duties are the same as those of any other president of a deliberative assembly. When parliament is about to be prorogued, it is customary for the speaker to address to the sovereign, in the House of Lords, a speech recapitulating the proceedings of the session. Should a member persevere in breaches of order, the speaker may "name" him (as it is called), a course uniformly followed by the censure of the house. In extreme cases the speaker may order members or others into custody until the pleasure of the house be signified. On divisions, when the numbers are equal, he gives the casting vote, but never otherwise votes. He is chosen by the House of Commons, from amongst its members, subject to the approval of the crown, and holds office till the dissolution of the parliament in which he was elected. His salary is £6000 a year, with a furnished residence. At the end of his official labors he is rewarded by a peerage, and a pension of £4000 for two lives. He is a member of the Privy Council, and ranks after barons.—*Dod Parl. Com.*

§ 3. Speaker of the House of Lords.—The lord chancellor, by virtue of his office, becomes, on the delivery of the seal to him by the sovereign, speaker of the House of Lords. He is usually, but not necessarily, a peer. There has always been a deputy speaker, and formerly there were two or more, but since the year 1815 there has been only one. The chairman in committees generally fills this office. In the absence of the lord chancellor and of the deputy speaker, it is competent to the house to appoint any noble lord to take the wool-sack. The speaker is the organ or mouth-piece of the house, and it therefore is his duty to represent their lordships in their collective capacity, when holding intercourse with other public bodies or with individuals. He has not a casting vote upon divisions, for should the numbers prove equal, the non-contents prevail. The deputy speaker of the lords is appointed by the crown.—*Dod Parl. Com.*

SPEAKING DEMURRER.—One in which new facts, which did not appear upon the face of a bill in equity, were in-

roduced to support a demurrer. *See* 1 Dan. Ch. Pr. (5 edit.) 538. *See, also*, DEMURRER, § 7.

SPEAKING DEMURRER, (defined). 4 Paige (N. Y.) 374.

SPECIAL ACCEPTANCE OF A BILL OF EXCHANGE.—Where the acceptor makes the bill payable at a particular place, "and not elsewhere," it is so termed. This is also sometimes termed a restrictive special acceptance as distinguished from one payable generally or at a particular place only, without the addition of the words "and not elsewhere." *See* ACCEPTANCE, § 4.

SPECIAL ACT, (defined). 24 Ind. 28, 34.

SPECIAL ADMINISTRATION.—A limited one, as of certain specific effects, such as a term of years.

SPECIAL ADMINISTRATOR.—*See* ADMINISTRATION, § 3.

SPECIAL AGENT.—One authorized to transact only a particular business for his principal, as distinguished from a general agent. *See* AGENT, § 6.

SPECIAL AGENT, (who is not). 21 Wend. (N. Y.) 279.

— (distinguished from "general agent"). 3 Wend. (N. Y.) 90; 7 Wheel. Am. C. L. 431.

SPECIAL ALLOWANCES.—In taxing the costs of an action as between party and party, the taxing officer is, in certain cases, empowered to make special allowances, *i. e.* to allow the party costs which the ordinary scale does not warrant.

SPECIAL ASSUMPSIT.—An action of assumpsit brought on a special contract, which the plaintiff declares upon setting out its particular language or its legal effect.—*Bowyer*.

SPECIAL AUTHORITY.—*See* AUTHORITY, § 3.

SPECIAL BAIL.—Bail above or to the action. *See* BAIL, § 3.

SPECIAL BAIL, (defined). 19 Ill. 57.

— (in a statute). 3 Pa. 529.

SPECIAL BAILIFF.—One chosen by a party himself, to execute process in the sheriff's

hands; the appointment of such a bailiff relieves the sheriff of all responsibility. 2 Steph. Com. (7 edit.) 633.

SPECIAL BASTARD.—One born of parents before marriage, the parents afterwards intermarrying. By the civil and Scotch law he would be then legitimated.

SPECIAL CASE, in English procedure, is a mode of obtaining a judicial decision on a statement of facts submitted to the court by the parties without the aid of pleadings (*q. v.*) The parties to an action may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the court. (Rules of Court, xxxiv. 1, 7, (Rules of April, 1880,) abolishing the practice of stating special cases without pending action, under Stat. 13 and 14 Vict. c. 35, as to which *see* Dan. Ch. Pr. 1701 *et seq.*) But independently of the agreement of the parties, if it appears from the pleadings or otherwise in an action that there is a question of law which it would be convenient to have decided before any other proceedings are taken, the court may direct it to be raised by special case. (Rules of Court, xxxiv. 2; Met. Board of Works v. New River Co., 1 Q. B. D. 727; 2 *Id.* 67. As to a verdict subject to a special case, *see* VERDICT.) A special case is set down for hearing, and argued in court, after which judgment is given according to the rights of the parties. The court has power to draw inferences of fact, *i. e.* to assume the existence of facts not expressly stated. *See* DEMURRER; QUESTIONS OF LAW.

SPECIAL CASES, (in State constitution). 6 Abb. (N. Y.) Pr. 83; 7 *Id.* 328; 5 Barb. (N. Y.) 169, 171; 23 *Id.* 88; 26 *Id.* 218, 221; 12 N. Y. 593; 16 *Id.* 80; 18 *Id.* 57.

SPECIAL CIRCUMSTANCES, (in rule of court). 2 C. P. D. 430.

— (in a statute). L. R. 3 Ex. 4.

SPECIAL CLAIM.—In English law, a claim not enumerated in the orders of 22d April, 1850, which required the leave of the Court of Chancery to file it. (Sm. Ch. Pr. 645.) Such claims are abolished.

SPECIAL COMMISSION.—An extraordinary commissioner of oyer and terminer and gaol delivery, issued by the crown to the judges when it is necessary that offenses should be immediately tried and punished.—*Wharton*.

SPECIAL CONSTABLES.—Persons appointed by the magistrates to execute warrants on particular occasions (41 Geo. III. c. 78) or to assist in keeping the peace, when the ordinary constables are insufficient for that purpose. *See* 1 and 2 Will. IV. c. 41; 5 and 6 Will. IV. c. 43, and 1 and 2 Vict. c. 80. As to private persons acting in execution of justice without authority, *see* 2 Steph. Com. (7 edit.) 657.

SPECIAL CONTRACT, (when assumpsit will lie for money due upon). 9 Pet. (U. S.) 565.

SPECIAL DAMAGES.—The damages which a plaintiff seeks to recover are either general or special. "General damages" are such as the law implies or presumes to have resulted from the wrong complained of. "Special damages" are such as really and in fact resulted, but are not implied by law, and are either super-added to general damages arising from an act injurious in itself, as where some particular loss arises from the uttering of slanderous words actionable in themselves, or are such as arise from an act indifferent and not actionable in itself, but injurious only in its consequences, as where words become actionable only by reason of some special or actual damage having resulted from the uttering of them. Whenever the damages sustained by a party have not necessarily resulted from the act complained of, and consequently are not implied by law, the plaintiff must, in order to prevent surprise on the defendant which otherwise might ensue on the trial, state with particularity in his declaration the actual or special damage which he has sustained, and such special damage is in fact in these cases portion of the very ground of action. 8 T. R. 133; 1 Ch. Pl. (6 edit.) 395, 396. *See* DAMAGE, §§ 3, 4.

SPECIAL DAMAGES, (defined). 43 Conn. 562, 567.

— (distinguished from "general damages"). 6 Wall. (U. S.) 578.

SPECIAL DEFENSE.—*See* DEFENSE, § 7.

SPECIAL DEMURRER.—A demurrer for some defect in the form of the opposite party's pleading. Abolished, in England, by C. L. P. Act, 1852, § 51. Such defects in pleading as were formerly the subject of special demurrer, may now be met by an application to a judge at

chambers to reform the pleading. *See* DEMURRER, § 5.

SPECIAL DEPOSIT.—*See* DEPOSIT, § 1.

SPECIAL DEPOSITS, (defined). 80 N. Y. 82, 96; 19 Am. Dec. 418 n.

— (in statute concerning national banks). 10 Otto (U. S.) 699.

SPECIAL EXAMINER.—One appointed to take examinations in suits in Chancery, &c., when appointed, by agreement of the parties, instead of the officer of the court, for the greater dispatch of the suit. He was generally a professional lawyer. Sm. Ch. Pr. 27; 15 and 16 Vict. c. 86, § 31 *et seq.* *See* EXAMINER, § 2.

SPECIAL INDORSEMENT.—An indorsement in full on a bill of exchange or promissory note, which, besides the signature of the indorser, expresses in whose favor the indorsement is made. Thus, "Pay Mr. C. D. or order, A. B.," the signature of the indorser being subscribed to the direction. Its effect is to make the instrument payable to C. D. or his order only, and accordingly, C. D. cannot transfer it otherwise than by indorsement. The omission of the words, "or order," is not material in a special indorsement, for the indorsee takes it with all its incidents, and among the rest with its negotiable quality, if it were originally made payable to order. *See* Byles Bills (11 edit.) 148. *See, also,* INDORSEMENT, § 3.

SPECIAL INDORSEMENT OF WRIT.—The writ of summons in an action may, under Order iii. 6, be indorsed with the particulars of the amount sought to be recovered in the action, after giving credit for any payment or set-off; and this special indorsement (as it is called) of the writ is applicable in all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, check or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not.—*Brown.*

SPECIAL INJUNCTIONS.—Prohibitory writs or interdicts against acts of parties, such as waste, nuisance, piracy, &c. *See* INJUNCTION, § 2.

SPECIAL INSTANCE AND REQUEST, AT THEIR, (in a declaration). 2 H. Bl. 320.

SPECIAL ISSUES.—The issues produced upon special pleas, as being usually more specific and particular than those of *not guilty, never indebted, &c.*, are sometimes described in the books as special issues by way of distinction from the others, which are called "general issues," the latter term being also applied not only to the issues themselves, but to the pleas which tendered and produced them. (Steph. Pl. (5 edit.) 109; Co. Litt. 126 a; Heath Max. 53; Com. Dig. "Pleader" (R. 2).)—*Brown*.

SPECIAL JUDGMENT.—See JUDGMENT, § 13.

SPECIAL JURY.—A jury consisting of persons who, in addition to the ordinary qualifications, are of a certain station in society, as esquires, bankers, or merchants, &c. See JUROR, §§ 2, 8.

SPECIAL LAW, (defined). 24 Ind. 28; 27 Id. 95.

— (what is). 17 Cal. 547, 552; 22 Iowa 391; 26 Id. 340.

— (what is not). 26 Ind. 431; 29 Md. 516.

— (distinguished from "general law"). 13 Vr. (N. J.) 195, 363, 409, 440.

SPECIAL LICENSE.—One granted by the Archbishop of Canterbury to authorize a marriage at any time or place whatever. 2 Steph. Com. (7 edit.) 247, 255. See LICENSE, 755 n.

SPECIAL MEETING, (in rule of society). 1 Exch. 494; 17 L. J. Ex. n. s. 177.

SPECIAL OCCUPANCY.—Where an estate is granted to a man and his heirs during the life of *cestui que vie*, and the grantee dies without alienation, and while the life for which he held continues, the heir will succeed, and he is called a "special occupant." See 7 Will. IV. and 1 Vict. c. 26, §§ 3, 6; 1 Steph. Com. (7 edit.) 449, 682. See, also, OCCUPANCY, § 4.

SPECIAL PAPER.—A list kept in the English courts of common law, and now in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court, in which list demurrers, special cases, &c., to be argued are set down. It is distinguished from the new trial paper, peremptory paper, crown paper, revenue paper, &c., according to the practice of the particular division. See PAPER, § 2.

SPECIAL PARTNER.—A partner with a limited or restricted responsibility; a limited partner. (3 Kent Com. 84.) A

member of a limited partnership, who furnishes certain funds to the common stock, and whose liability extends no farther than the fund furnished. (*Id.* 85).—*Burrill*.

SPECIAL PARTNERSHIP.—A partnership limited to a particular branch of business, or to one particular subject. (3 Kent Com. 30; Story Part. § 75).—*Burrill*.

SPECIAL PLEADERS.—Members of an inn of court, not called to the bar, who devote themselves mainly to the drawing of pleadings, and to attending at judges' chambers. See INNS OF COURT.

SPECIAL PLEADING.—When the allegations (or pleadings, as they are called,) of the contending parties in an action are not of the general or ordinary form, but are of a more complex or special character, they are denominated "special pleadings;" and when a defendant pleads a plea of this description (*i. e.* a special plea) he is said to plead specially, in opposition to pleading the general issue. These terms have given rise to the popular denomination of that science which, though properly called "pleading," is generally known by the name of "special pleading." Hence, also, the denomination of "*special pleader*," as applied to those learned persons who are employed in drawing and framing special pleadings. These, it may be as well to observe, are mostly gentlemen who have studied for more than three years at one of the inns of court, and who may or may not intend, at some future period, to engage in the more complicated and important avocations of a barrister. (Steph. Pl. 31, 186.) Under the present system of pleading (as introduced by the Judicature Acts, 1873-5,) the business of special pleaders as such has almost ceased; but they often attend in chambers (although not in court), and are largely employed in giving opinions, for which their great special knowledge peculiarly fits them.—*Brown*.

SPECIAL PLEAS.—Pleas which are not in the form of what are called "general issues," but which allege affirmative matter, as infancy, coverture, statute of limitations, &c. (See PLEA, § 7.) Special pleas in bar in criminal matters go to the merits of the indictment, and give a reason why the prisoner ought to be discharged from the prosecution; they are of four kinds,

viz., a former acquittal, a former conviction, a former attainer, or a pardon. See the various titles.

SPECIAL POWER.—See POWER, § 3.

SPECIAL POWER TO DISPOSE OF ESTATE BY WILL, (in a statute). 9 Bush (Ky.) 404.

SPECIAL PRIVILEGE, (what is not). 1 Utah T. 108.

SPECIAL PROCEEDING.—All civil remedies in the code States, which are not ordinary actions, are called "special proceedings."

SPECIAL PROCEEDINGS, (in a statute). 34 Wis. 564, 574.

SPECIAL PROMISE, (in statute of frauds). 2 N. Y. 533, 538.

SPECIAL PROPERTY.—Qualified property (*q. v.*)

SPECIAL PURPOSE, (in a statute). L. R. 8 Q. B. 403.

SPECIAL REFEREE.—See REFEREE, § 2.

SPECIAL RULES.—The grounds upon which certain rules are granted are subject to so little variation, and are so well understood, that in practice they are obtained from the proper officer of the court upon application by the party or his solicitor, and without any motion, actual or supposed. In other cases, the motion need not be actually made in court, but it is supposed to be made, and the proper officer draws up the rule on the production of a brief or motion paper signed by counsel; the rules granted without any motion in court, or when the motion is only assumed to have been, and is not actually made, are called "common rules," while the rules granted upon motion actually made to the court are termed "special rules." (Bagl. Prac. 279; 2 Arch. Pr. 1708.)—*Brown.*

SPECIAL SERVICE.—In the Scotch law, that form of service by which the heir is served to the ancestor who was feudally vested in the lands.—*Bell Dict.*

SPECIAL SESSIONS.—A meeting of two or more justices of the peace held for a special purpose (such as the licensing of ale-houses), either as required by statute, or when specially convoked, and can only be convened after notice to all the other magistrates of the division, to give them an opportunity of attending. Stone J. st. 52, 55. See PETTY SESSIONS; QUARTER SESSIONS.

SPECIAL SESSIONS, (defined). 4 Bl. Com. 272, 273; 2 Steph. Com. 649.

SPECIAL TAIL.—Where an estate tail is limited to the children of two given parents, as to A. and the heirs of his body by B., his wife. 1 Steph. Com. (7 edit.) 244. See ESTATE TAIL, §§ 2, 3.

SPECIAL TERM.—In New York law, a court held by a single judge, as distinguished from the "general term," which is generally held by three judges, or the court in banc.

SPECIAL TRAVERSE.—Was that peculiar form of traverse or denial in pleading by which the party traversing explained or qualified his denial instead of putting it, as by a common traverse he would, in a direct and absolute form. He first alleged new affirmative matter, which was called the "inducement," and then added a distinct and formal denial of such portions of the adverse pleading as supported the adversary's case. This negative part was termed the *absque hoc*, those being the words with which this portion of the plea commenced, and the whole was finished by a conclusion to the country. The inducement or introduction of new affirmative matter, was usually employed for the purpose of avoiding some rule of law prohibiting a plain and simple denial of the adversary's allegation; and was sometimes employed for the purpose of raising a question of law at once upon the pleadings. (Steph. Pl. (5 edit.) 193-218; 3 Chit. (6 edit.) 908; Brudnell v. Roberts, 2 Wils. 143; Palmer v. Ekyns, Ld. Raym. 1550.)—*Brown.* See ABSQUE HOC.

SPECIAL TRUST.—

§ 1. Where the machinery of a trust is introduced for the execution of some purpose particularly pointed out, and the trustee is not a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts.

§ 2. Special trusts have been divided into (1) ministerial (or instrumental) and (2) discretionary. The former, such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; the latter, such as cannot be duly administered without the application of a certain degree of prudence and judgment.

§ 3. Special trusts may be divided, with reference to the object in view, into (1) lawful and (2) unlawful. The former, such as are directed to some honest purpose, as a trust to pay debts, &c., which are called by Lord Bacon "intents," or "confidences," and will be administered by the Court of Chancery. The latter are trusts created for the attainment of some end contravening the policy of the law, and therefore not to be sanctioned, as a trust to defraud creditors or to defeat a statute.

Such are designated by Lord Bacon "frauds," "covins," or "collusions." Lew Trusts (4 edit.) 8, 17; 1 Steph. Com. (7 edit.) 371.

SPECIAL VERDICT.—A special finding of the facts of the case, leaving to the court the application of the law to the facts thus found. In general, where it is intended* that a special verdict shall be taken, evidence is given at the trial by each party to prove the fact upon which he relies; and if there is any disputed question of fact the same is determined by the jury. Afterwards, the counsel settle the precise terms of the special verdict, the judge being resorted to in case of difference. 1 Chit. Arch. Pr. (12 edit.) 450. See TRIAL; VERDICT.

Specialia generalibus derogant (L. R. 1 C. P. 546): Special words derogate from general words. A special provision as to a particular subject-matter is to be preferred to general language, which might have governed in the absence of such special provision. See, also, 4 Macq. Sc. App. Cas. 522.

SPECIALLY AUTHORIZED, (in a statute). 126 Mass. 269, 273.

SPECIALTY.—A contract by deed. See DEED.

SPECIALTY, (defined). 5 Neb. 85, 87.
 — (what is). 2 Bond (U. S.) 104; 1 Dall. (U. S.) 208; 1 Binn. (Pa.) 254.
 — (what is not). 8 Pet. (U. S.) 371; 2 Wheel. Am. C. L. 192; 2 Stark. 234.
 — (in statute of limitations). 15 Ind. 280; 51 Iowa 254.

SPECIALTY DEBTS.—Bonds, mortgages, debts, secured by writing under seal. See DEBT, § 4.

SPECIE.—As applied to contracts, signifies specifically, strictly, or according to the specific terms; and, as applied to things, individuality or identity. Whether a thing is due *in genere* or *in specie* depends in each case on the will of the parties. If a thing be designated only by its kind, as, e. g. any house whatever, or any of my houses, any cask of wine, or any cask of the vintage of 1834 in my cellar, it may be furnished *in genere*. But if the thing be designated individually, e. g. my house, No. 2 Belgrave Square, or my five-year old bay saddle horse, it is not then generic.

but must be furnished or returned *in individuo*. The practical distinction between the two is, that he who is under an obligation with respect to a thing specifically designated cannot furnish any other than the very thing itself; whereas, in the case of a thing which is designated generically, the party obliged has the choice of giving which of the species he will, as the other party has no right to any one thing in particular. (Brown Sav. 70.)—Brown. See FUNGIBLES.

SPECIE, (defined). 49 Ala. 219; 4 Yeates (Pa.) 95, 98.

— (in a promissory note, synonymous with "gold" and "silver"). 4 T. B. Mon. (Ky.) 483.

SPECIES, BULL, (in cattle act). 69 Ill. 469.

SPECIES FACTI.—In the Scotch law, the particular criminal act charged against an accused person.

SPECIFIC.—Having a certain form or designation; observing a certain form; particular; precise.—Burrill.

SPECIFIC CONTRACT, (in rating act). 2 Q. B. D. 286.

SPECIFIC DENIAL, (equivalent to "special denial"). 9 Cal. 453.

SPECIFIC DEVISES.—Are devises of lands particularly specified in the terms of the devise, as opposed to general and residuary devises of land, in which the local or other particular descriptions are not expressed. For example, I devise my Hendon Hall estate is a specific devise; but I devise all my lands or all other my lands is a *general* devise or a *residuary* devise. But all devises are (in effect) specific, even residuary devises being so. (Hensman v. Fryer, L. R. 3 Ch. 420; Lancefield v. Iggulden, 10 Id. 136.)—Brown.

SPECIFIC DEVISES, (what are). 4 Mass. 154.

SPECIFIC LEGACY.—See LEGACY, § 2.

SPECIFIC LEGACY, (defined). 16 Conn. 6; 3 Duer (N. Y.) 477, 543.

— (what is). 2 Halst. (N. J.) 414; 9 Ves. 361.

— (what is not). 1 Halst. (N. J.) 139; 7 Ves. 522.

— (distinguished from "general legacy"). 3 Yeates (Pa.) 486, 491.

— (designation of residuary clause as). 10 C. E. Gr. (N. J.) 228.

SPECIFIC PERFORMANCE.—

The doctrine of specific performance is that where damages would be an inadequate compensation for the breach of an agreement, the contractor will be compelled to perform specifically what he has agreed to do. The principal instances of the jurisdiction occur in contracts for the sale, purchase or lease of land, or for the recovery of unique chattels, of which the Pusey Horn is a well-known example. (Dart Vend. 981; Snell Eq. 423; Pusey v. Pusey, 1 Vern. 273; 1 White & T. Lead. Cas. 735; but not for the transfer of ordinary personal property, *e. g.* South Sea Stock; Cuddee v. Rutter, 5 Vin. Abr. 538; 1 White & T. Lead. Cas. 709.) In such cases the court will order the defendant to carry out the sale, purchase, or lease, or deliver up the chattel, and will imprison him until he does so. But the court will not order specific performance of a personal contract, such as a contract to sing, or paint a picture. Lumley v. Wagner, 5 De G. & S. 485. See CAIRNS' ACT; CONTRACT, § 11.

SPECIFIC QUESTION, (for trial by jury or referee). 21 Minn. 366, 369.

SPECIFICALLY, (when construed "particularly"). 16 Ves. 451.

— (in a will). 4 Com. Dig. 155.

SPECIFICATIO.—In the Roman law, a mode by which one person could acquire property belonging to another by making it into something different; as where a man made wine out of another's grapes; but the specifier was liable to make compensation to the original owner. (2 Just. Inst. 1, 25; Hunt. Rom. L. 134.) Specificatio does not exist in our law, although included by Blackstone and others as variety of accession (*q. v.*, § 2).

SPECIFICATION.—When a person applies for a patent (*see* PATENT RIGHT), he must leave with his petition a statement in writing describing the nature of his invention, and called the "specification" (in England, the "provisional specification"). This is referred to the proper law officer (in England the attorney- or solicitor-general, in America the commissioner of patents), and, in England, if he certifies that it describes the nature of the invention, the applicant may use and publish the invention during the next six months without losing his right to obtain letters patent, if on investigation he determines

to go on with his application. When the letters patent are granted, the inventor must, within six months from their date, file a complete specification, "particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed," unless he elects to file a complete specification in the first instance, in lieu of a provisional one. (Patent Law Am. Act, 1852, § 6 *et seq.*, 27 *et seq.*; Stoner v. Todd, 4 Ch. D. 58.) Specifications require to be framed with great care, neither covering more than is the proper subject of the patent, nor omitting anything necessary to make the description intelligible. Wms. Pers. Prop. 283; 2 Steph. Com. 30. See DISCLAIMER, § 2; MEMORANDUM OF ALTERATION.

SPEED, (in a will). 6 Ves. 520.

SPEEDILY, (in a statute). 15 Mass. 457.

SPEEDY EXECUTION.—An execution which, by the direction of the judge at *Nisi Prius*, issues forthwith, or on some early day fixed upon by the judge for that purpose after the trial of the action.—*Brown*.

SPEEDY TRIAL, (defined). 2 Crim. L. Mag. 332.

SPES RECUPERANDI.—The hope of recovery. The chance of recovering captured property is so called.

SPIGURNEL.—The sealer of the royal writs.

SPINSTER.—An unmarried woman, so called because she was supposed to be occupied in spinning.

In Scotland, the wife's or cognate side of the family was termed the "spindle-side," in contradistinction to the agnate or husband's side, which is denominated the "spear" or "sword-side." The armorial bearings of the families of widows and spinsters are painted on this spindle, which is popularly termed a lozenge. Amongst the Romans, the bride at a marriage carried a distaff and spindle with wool, as a type that she was, like a good housewife, to occupy herself in spinning, and in memory of Caia Cæcilia, or Tanaquil, wife of Tarquinius Priscus, a famous spinster. That spinning was eminently the duty of a housewife in the oldest times we learn from the most ancient Greek authors.—*Wharton*.

SPINSTER, (defined). Love, Wills 269 App.

SPIRITUAL, (in an indictment, equivalent to "spirituous"). 3 Ind. 451.

SPIRITUAL CORPORATIONS.—Corporations the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church. They are of two sorts,

(1) *sole*, as bishops, certain deans, parsons, and vicars; or (2) *aggregate*, as dean and chapter, prior and convent, abbot and monk. See CORPORATION, § 5.

SPIRITUAL COURTS.—Ecclesiastical courts (*q. v.*)

SPIRITUAL LORDS.—The archbishops and bishops of the House of Peers. 1 Br. & Had. Com. 184; 2 Steph. Com. (7 edit.) 328.

SPIRITUALITIES OF A BISHOP.—Those profits which a bishop receives in his ecclesiastical character, as the dues arising from his ordaining and instituting priests, and such like, in contradistinction to those profits which he acquires in his temporal capacity as a baron and lord of parliament, and which are termed his temporalities, consisting of certain lands, revenues and lay fees, &c. (Staund. Pl. Cor. 132.)—*Cowell*. See TEMPORALITIES.

SPIRITUALITY.—That which belongs to one as an ecclesiastic.

SPIRITUALITY OF BENEFICES.—The tithes of land, &c.

SPIRITUOUS, (in license act). 5 Blackf. (Ind.) 118.

SPIRITUOUS LIQUORS.—These are inflammable liquids produced by distillation, and forming an article of commerce. (Att'y-Gen. v. Bailey, 1 Ex. 281.) Excise duties are payable by distillers, and the use of stills by unlicensed persons is prohibited. Retailers of spirits have to pay license duty. See CUSTOMS; EXCISE; LICENSE, § 5, and *note*.

SPIRITUOUS LIQUORS, (defined). 1 Baxt. (Tenn.) 15.

— (distinguished from "intoxicating liquors"). 6 Cush. (Mass.) 468; 12 Id. 272; 2 Gray (Mass.) 502; 4 Id. 20.

— (in license act). 5 Blackf. (Ind.) 118.

SPIRITUOUS LIQUORS, TO WIT, WHISKEY, (in a complaint for sale of). 23 Minn. 549.

SPITAL, or **SPITTLE.**—A charitable foundation; a hospital for diseased people.—*Cowell*.

SPITAL, (is an abbreviation of hospital). 1 P. Wms. 426.

SPLINT, (as applied to a disease of a horse, defined). 8 Bing. 454, 457.

— (on a horse renders him unsound). 1 Moo. & S. 622.

SPLITTING A CAUSE OF ACTION.—Suing for only a part of a claim or demand, with a view to suing for the rest in another action. This is not permitted.

SPOLIATION.—A suit in a spiritual court by which an incumbent of a benefice suggests that his adversary has wasted (*spoliavit*) the fruits of the benefice, or received them to his prejudice. Such a suit lies by one incumbent against another to try which of them is the rightful incumbent where they both claim by one patron, and where the right of patronage does not come in question; *e. g.* where a patron, erroneously believing his clerk to be dead, presents another; there the first incumbent may have a spoliation against the other. Phillim. Ecc. L. 515.

SPOLIATOR.—It is a maxim of law, bearing chiefly on evidence, but also upon the value generally of the thing destroyed, that everything most to his disadvantage is to be presumed against the destroyer (*spoliator*), *contra spoliatorem omnia præsuntur*. (Armory v. Delamirie, 1 Sm. Lead. Cas. 815.)—*Brown*.

Spoliatus debet ante omnia restitui (2 Inst. 714): A person who has been despoiled, ought to be restored to his former state before anything else.

SPONSALIA, or **STIPULATIO SPONSALITIA.**—In the civil law, espousals; mutual promises to marry.

SPONSIA JUDICIALIS.—The feigned issue of the Romans. See FEIGNED ISSUE.

SPONSIONS.—In international law, agreements or engagements made by certain public officers, as generals or admirals in time of war, either without authority, or in excess of the authority under which they purport to be made.—*Wharton*.

SPONSOR.—A surety; one who makes a promise or gives security for another, particularly a godfather in baptism.

SPONTE OBLATA.—A free gift or present to the crown.

Sponte virum mulier fugiens et adultera facta, dote sua careat, nisi sponsi sponte retracta (Co. Litt. 32b): Let a woman leaving her husband of her own accord, and committing adultery, lose her dower, unless taken back by her husband of his own accord.

SPORTING.—

§ 1. As to the right of sporting, *i. e.* of killing and taking game, on a man's own land, see GAME. The right of sporting on another man's land is, in English law, a *profit à prendre*, and, therefore, an incorporeal hereditament, (Wms. Comm. 18; as to the reservation of rights of sporting under the Inclosure Acts, see *Id.* 240; Musgrave v. Forster, L. R. 6 Q. B. 590;) it can only be con-

veyed by deed of grant. (Wms. Seis. 122.) Such a grant does not prevent the owner of the land from cutting down trees, &c. (*Gearns v. Baker*, L. R. 10 Ch. 355.) It is generally an exclusive or several right, i. e. excluding the owner of the land from its exercise; but it may be a right of common. See COMMON, §§ 1, 16.

§ 2. The Rating Act, 1874, makes the right of sporting, when severed from the occupation of the land, a ratable hereditament. § 3; and see *Eyton v. Overseers of Mold*, 6 Q. B. D. 13. See CHASE; FOREST; PARK; WARREN.

SPORTULA, or SPORTELLA.—A dole or largess, either of meat or money, given by princes or great men to the poor. It was properly the pannier or basket in which the meat was brought, or with which the poor went to beg it, thence the word was transferred to the meat itself, and thence to money sometimes given in lieu of it.—*Encycl. Lond.*

SPOUSAL.—Marriage nuptials.

SPOUSE-BREACH.—Adultery, as opposed to simple fornication.—*Cowell.*

SPREADING FALSE NEWS.—To make discord between the sovereign and nobility, or concerning any great man of the realm, is a misdemeanor, punishable at common law by fine and imprisonment. 4 Steph. Com. (7 edit.) 257.

SPRINGING USE.—A contingent use (q. v.) See USE.

SPUILZIE.—In the Scotch law, the taking away or meddling with movables in another's possession, without the consent of the owner or authority of law.—*Bell Dist.*

SPURIL.—Children conceived in prostitution. Sand. Inst. (5 edit.) 366.

SPURIOUS BILL, (distinguished from "forged bill"). 1 Ohio St. 185.

SPY.—(1) An enemy who comes to reconnoitre; if caught he is generally shot or hanged. (2) One employed by the police secretly to track and detect offenders.

SQUARE, (defined). Anstr. 39, 44.
(as a term of dedication). 4 Vr. (N. J.) 14.

— (in tax law). 10 Bush (Ky.) 179.

SQUARE, PUBLIC, (erection of building upon, is a public offense). 2 Watts (Pa.) 23.

SQUARE YARD, (as meaning "cubic yard"). 2 B. Mon. (Ky.) 177, 181.

SQUATTER.—One who, without any title, settles on another's land (usually new or wild land), or on public land.

SQUIRE.—A contraction of esquire (q. v.); and see 1 Steph. Com. (7 edit.) 616 et seq.

SS.—An abbreviation used in that part of a record, pleading, or affidavit, called the "statement of the venue" or county in which it is made: as "city and county of New York, ss."

STAB, (defined). 3 La. Ann. 512.

STAB, STICK AND THRUST, (in an indictment). 2 Va. Cas. 111.

STABBING, (what constitutes). 56 Ga. 408.

STABILIA.—A writ called by that name, founded on a custom in Normandy, that where a man in power claimed lands in the possession of an inferior, he petitioned the prince that it might be put into his hands till the right was decided, whereupon he had this writ.—*Wharton.*

STABILITIO VENATIONIS.—The driving deer to a stand.

Stabit præsumptio donec probetur in contrarium (Hob. 297): A presumption will stand good till the contrary is proved.

STABLE, (defined). 5 Car. & P. 555; 2 Cox C. C. 186.

STABLES, (in a covenant). 2 Vent. 214.

STABLESTAND.—One of the four evidences or presumptions whereby a man is convicted to intend the stealing of the royal deer in the forest; and this is when a man is found at his standing in the forest, with a cross-bow bent ready to shoot at any deer, or with a long bow, or else standing close by a tree with greyhounds in a leash ready to slip.—*Cowell.*

STABULARIUS.—A stable-keeper.

STACHIA.—A dam made to stop a water-course.—*Cowell.*

STACK, (defined). 2 Cox C. C. 186.

STACK OF BARLEY, (indictment for setting fire to). 4 Car. & P. 548.

STACK OF STRAW, (indictment for setting fire to). 4 Car. & P. 245.

STACK OF WOOD, (defined). 6 Car. & P. 348.

STADE, or STADIUM.—A furlong.—*Cowell.*

STADIUM, (defined). Co. Litt. 5b.

STAFF-HERDING.—The following of cattle within a forest.

STAGE, (defined). 9 Conn. 374; 11 Id. 199; 8 Ad. & E. 386, 391.

STAGE COACH, (liability of proprietors of). 1 Pick. (Mass.) 50; 8 Id. 182; 18 Wend. (N. Y.) 175; 19 Id. 234, 251.

STAGE COACHES, (are included in the words "coaches, chariots and other four-wheeled pleasure carriages"). 9 Ohio 11.

STAGE-RIGHT is a word which it has been attempted to introduce as a substitute for "the right of representation and performance" (q. v.), but it can hardly be said to be an accepted term of English or American law. *Coryt. Stage-Right; Reade v. Conquest*, 11 Com. B. N. S. 485

STAGIARIUS.—A resident.—*Cowell.*

STAGNUM.—A pool. By this name the land and water pass. Co. Litt. 5a.

STAKE.—A deposit made to answer an event.

STAKEHOLDER primarily means a person with whom money is deposited pending the decision of a bet or wager (*q. v.*); but it is more often used to mean a person who holds money or property which is claimed by rival claimants, but in which he himself claims no interest. See INTERPLEADER.

STALE.—Among the Saxons, larceny.

STALE, (what lapse of time makes a maritime lien). 6 Biss. (U. S.) 13.

STALE DEMAND.—A demand or claim which has not been pressed or asserted for so long a time that a court of equity will refuse to enforce it. See 2 Mas. (U. S.) 161.

STALLAGE.—A payment due to the owner of a market in respect of the exclusive occupation of a portion of the soil within the market. Shelf. R. P. Stat. 35; Mayor of Penryn v. Best, 3 Ex. D. 292. See MARKET.

STALLARIUS.—A master of the horse; also, the owner of a stall in a market.—*Spel. Gloss.*

STALLION, (in a statute). 30 Iowa 459.

STAMP.—

§ 1. A label or printed device furnished by the government to be attached to some subject of charge or taxation, as evidence that the proper sum has been paid. By a recent act of congress, to take effect October 1st, 1883, most of the commodities now requiring to be stamped under the internal revenue laws, will no longer require to be stamped. See POSTAGE STAMP.

§ 2. In England, stamps are used for two purposes: first, as a convenient mode of collecting fees payable in courts of justice (*e. g.* on filing documents, issuing writs and summonses, &c.), and secondly, as a mode of raising taxes on written instruments, such as receipts, conveyances, leases, &c., by virtue of various enactments known as the Stamp Acts. The existing acts are those of 1870 and 1871, varied by Stat. 39 Vict. c. 6, and 44 *Id.* c. 12. For a history of the whole subject, see Dow. St. L.; 2 Steph. Com. 571. See COMMISSIONER, p. 236 n.

§ 3. **Fixed and ad valorem stamps.**—Stamps of the latter kind are either fixed in

amount, or *ad valorem*, *i. e.* proportionate to the value of the property dealt with by the instrument. Thus, the stamp on every receipt, check, and power of attorney, is fixed; while the stamps on bills of exchange, conveyances, leases, &c., vary with the amount of money or value of property which they deal with. Formerly deeds were liable to a progressive stamp of a fixed sum for every skin of parchment beyond the first, but this no longer exists.

§ 4. **Adhesive stamps—Impressed stamps.**—Adhesive stamps are sold separately, and are affixed and canceled by the person whose duty it is to have the instrument stamped. Others are impressed with a die on the parchment or paper on which the instrument is written.

§ 5. **Spoiled stamps.**—Provision is made by the Stamp Acts for the allowance (or repayment of the amount) of a stamp which has been "spoiled," *i. e.* where, by some accident or mistake, the stamp itself has been rendered unfit for use, or the instrument on which it has been affixed or impressed has become useless before it came into operation, and in certain other cases. Stamp Duties Management Act, 1870, § 14.

§ 6. **Appropriated stamps.**—Appropriated stamps are stamps which can only be used for instruments of a particular description, *e. g.* bills of lading. Stamp Act, 1870, § 9. For a list of such stamps, see Dowell 344.

§ 7. **Adjudication stamp.**—An adjudication stamp is used to signify that the instrument has been submitted to the commissioners of inland revenue, and that they are of opinion (if it is unstamped) that it is not chargeable with duty, or (if it is stamped) that it is duly stamped, and no question as to the proper stamp can then arise. Stamp Act, 1870, § 18.

§ 8. **Denoting stamp.**—Where the stamp duty on an instrument depends upon the stamp on another instrument, the fact that the latter stamp duty has been paid may be evidenced by a stamp impressed for that purpose on the first instrument. This is called a "denoting stamp." Stamp Act, 1870, § 14.

§ 9. **Unstamped instruments.**—No instrument executed in the United Kingdom, or relating to any property situate, or to anything done or to be done, in the United Kingdom, can be given in evidence or made use of, unless duly stamped. (Stamp Act, 1870, § 17.) In the case of the following documents—bills of exchange, promissory notes, checks and other drafts, bills of lading and proxies—they cannot be stamped after execution; and charterparties, attested copies, receipts, and policies of marine insurance, (Stats. 30 Vict. c. 23; 39 *Id.* c. 6; 44 *Id.* c. 12, § 44,) can only be stamped after execution within a limited time, or on payment of a special penalty. In the case of all other documents, the stamp may be affixed at any time after execution on payment of the unpaid duty, a penalty of £10 and interest on the duty at five per cent. per annum, so that the interest does not exceed the amount of the duty. But any instrument executed out of the United Kingdom may be stamped within two months from its arrival in this country, without payment of any penalty. The

commissioners are also empowered to stamp any instrument, without payment of a penalty, within twelve months after its execution. Under this provision, the practice of the commissioners is to stamp simple agreements, &c., within a fortnight, and deeds and instruments bearing an *ad valorem* duty within two months after execution, without penalty, as a matter of course.

§ 10. Where a document unstamped or insufficiently stamped is produced in a judicial proceeding, it may be received in evidence on payment to the officer of the court of the unpaid duty, the penalty, and a further sum of £1. Stamp Act, 1870, §§ 15, 16.

STANCE.—In the Scotch law, a resting place; a field or place adjoining a droveroad, for resting and refreshing sheep and cattle on their journey. 7 Bell Ap. Cas. 53–58.

STAND COMMITTED, (in order of court). 103 Mass. 57.

STAND, KEEPING A, (what is not). 8 East 336.

STAND SECURITY FOR THE PAYMENT, (indorsed by the obligee upon a bond). 16 Serg. & R. (Pa.) 79.

STAND SEIZED, (covenant to). 12 Mass. 96; 2 Hill (N. Y.) 659; Burr. 1445; 1 Chit. Gen. Pr. 324.

STANDARD.—That which is of undoubted authority, and the test of other things of the same kind; a settled rate.

STANDARD OF WEIGHT, or MEASURE.—A weight or measure fixed and prescribed by law, to which all other weights and measures are required to correspond.

STANDING, (defined). 121 Mass. 367; 122 Id. 60.

STANDING BY.—Sanctioning by silence and inaction. *See* LYING BY.

STANDING BY, (defined). 8 Blackf. (Ind.) 45, 47; 6 Ind. 289.

STANDING MUTE.—*See* MUTE.

STANDING ORDERS are rules and forms regulating the procedure of the two houses of parliament, each having its own. They are of equal force in every parliament, except so far as they are altered or suspended from time to time. Cox Inst. 136; May Parl. Pr. 185.

STANNARIES are a district which includes all parts of Devon and Cornwall where some tin work is situate and in actual operation. The tin-miners of the stannaries have certain peculiar customs and privileges, some of which are referred to under the head of TIN-BOUNDING. Civil actions in respect of matters arising within the stannaries may be brought in the Stannary Court, which is a court of record held before a judge called the "vicar warden of the stannaries;"

it also has power to wind up cost-book mining companies. (Bain. M & M. 571; 3 Steph. Com. 298.) Formerly an appeal lay to the lord warden of the stannaries, and from him to the Privy Council, but this jurisdiction has been transferred to the Court of Appeal. Judicature Act, 1873, § 18.

The Stannaries Act, 1869, contains provisions relating to the regulation of mining partnerships working mines in the stannaries. The procedure of the court is regulated by various statutes from 4 and 5 Will. IV. c. 42, to 18 and 19 Vict. c. 32, and by the General Orders of 1876. Procedure in the Court of the Vice-Warden of the Stannaries.

STAPLE.—A public mart which anciently was appointed by law to be held in Westminster, Newcastle, Bristol, and other places. A court was held before the mayor of the staple, which court was governed by the law merchant. It appears from Stat. 14 Rich. II., that the staple goods of England then were wool, woollens, leather, lead, tin, cloth, butter, cheese, &c.

STAPLE INN.—An Inn of Chancery. *See* INNS OF CHANCERY.

STAR.—The deeds, obligations, &c., of the Jews; also a schedule or inventory. 4 Steph. Com. (7 edit.) 309 n.

STAR-CHAMBER was a court which originally had jurisdiction "in cases where the ordinary course of justice was so much obstructed by one party, through writs, combination of maintenance or overawing influence, that no inferior court would find its process obeyed." (1 Hallam Const. Hist. 51) The court consisted of the Privy Council, the common law judges and (it seems) all peers of parliament. In the reign of Henry VIII. and his successors the jurisdiction of the court was illegally extended to such a degree (especially in punishing disobedience to the king's arbitrary proclamations) that it became odious to the nation, and was abolished by Stat. 16 Car. I. c. 10. 2 Id. 97; 4 Steph. Com. 310.

STAR-CHAMBER, (history and origin of court of). 12 Am. L. Rev. 21; 4 Bl. Com. 266, 267 n.

STARE DECISIS.—To abide by authorities or cases already adjudicated upon.

STARE IN JUDICIO.—To sue; to litigate in a court.

STARRUM.—*See* STAR.

STATE.—

§ 1. A State is a collection of persons occupying a certain territory, and having a legislative and executive organization free from the control of any other human power. The name "State" is sometimes given to bodies which are really only parts

of a State, such as the separate organizations which collectively make up the United States of America, or to governments, such as those of Monaco, San Marino and Andorra, which are under the protection or control of other States; hence a "State," in the ordinary and proper sense of the word, is described as an independent or sovereign State. As to the criteria of a State, *see* 2 Fish. Dig. 4093 *et seq.*

§ 2. Every State consists of two parts, the sovereign part and the subject part. In its external relations or dealings with other States the sovereign part, or a branch of it, represents the State. The relations between independent States are governed by what is called "international law" (*q. v.*) In its internal relations, that part of the sovereign government of a State which is entrusted with the executive power enforces the law dealing with the relations between it and the subject members of the State. It is, therefore, considered as representing the whole State, and hence the term "State" is frequently used in the sense of "executive power in a State," as when we say that the public law deals (among other things) with the relations between the State and the private members of the community. (*See* LAW, § 6.) As the State has the power of enforcing the law, it cannot be subject to legal duties, for otherwise it would have to enforce the law against itself. As to the subject of States generally, *see* Austin's and Holland's works on Jurisprudence, *passim*. *See* ACT OF STATE; PETITION OF RIGHT.

§ 3. Claims against foreign States.—It has been already mentioned that the relations between independent States are governed by international law, the nature of which is explained under that title. As one State cannot enforce a claim against another by legal procedure, it follows that no member of any State can enforce a claim against another State by legal proceedings in any court of justice external to the latter State. Therefore, if a foreign State borrows money from an American citizen, or commits what in the case of a private individual would be a tort against an American citizen, no proceedings can be taken in the American courts to enforce the claim thus arising, even although the

foreign State may have property within the jurisdiction of the American courts. This rule is subject to two apparent exceptions: (1) that if proceedings are taken by A. against B. in the American courts in respect of property in which a foreign State claims or is believed to have an interest, it may be made a party to those proceedings as defendant to enable it to come forward and sustain its claim; here, however, it is obvious that the foreign State, though in form a defendant, is really a plaintiff; (2) that if a foreign State takes proceedings in an American court against a private individual, the defendant can institute a cross-action or set up a set-off or counter-claim against the plaintiff as if the foreign State were a private person.

§ 4. "State"—"Estate."—"State," in the old books, sometimes stands for "estate." Co. Litt. 206 b.

STATE, (what constitutes). 2 Car. & P. 223. (Cherokee nation of Indians is not). 5 Pet. (U. S.) 21.

— (in United States constitution). 7 Wall. (U. S.) 700; R. M. Charl. (Ga.) 374.

— (in act for the government of seamen in the merchant service). Dedy (U. S.) 118.

— (in statute prohibiting lotteries). 4 Conn. 445.

STATE, ABSENT FROM THE, (in a statute). 8 Ala. 386.

STATE, CITIZEN OF A, (in United States constitution). 2 Cranch (U. S.) 445.

STATE, FOREIGN, (in United States constitution). 5 Pet. (U. S.) 1.

STATE OF FACTS AND PROPOSAL.—In English lunacy practice, when a person has been found a lunatic, the next step is to submit to the master a scheme, called a "state of facts and proposal," showing what is the position in life, property and income of the lunatic, who are his next of kin and heir-at-law, who are proposed as his committees, and what annual sum is proposed to be allowed for his maintenance, &c. From the state of facts and the evidence adduced in support of it, the master frames his report. (Elm. Pr. Lun. 22; Pope Lun. 79. *See* REPORT, § 2.) A similar practice formerly prevailed in Chancery.

STATE PRISON, (in a statute applies either to the penitentiary or county jail). 77 N. C. 319.

STATE SECRETS, (what are). 3 Bouv. Inst. § 3214.

STATE SPECIFIC TAX, (what is not). 32 Mich. 406; 20 Am. Rep. 654.

STATE TRIAL.—A trial for a political offense.

STATE TRIALS.—A work in thirty-three volumes, octavo, containing all trials

for offenses against the State and others partaking in some degree of that character, from the 9 Hen. II. to the 1 Geo. IV.

STATED ACCOUNT.—See ACCOUNT, § 3.

STATED ACCOUNT, (defined). 3 Pick. (Mass.) 113.

— (what is). 1 Baldw. (U. S.) 539; 7 Cranch (U. S.) 147; 12 Pet. (U. S.) 301, 335; 1 Atk. 1; 2 *Id.* 251; 2 Saund. 127 *n.*; 2 Ves. Sr. 239.

— (what is not). 5 Cranch (U. S.) 15.
— (not equivalent to "account closed").

6 Dane Abr. 152.

STATED ATTENDANCE, (on divine worship). 31 N. Y. 550.

STATEMENT.—See ANSWER, 61 *n.*;
BILL OF COMPLAINT, § 1.

STATEMENT, (as equivalent to "bill of exceptions"). 14 Cal. 510.

STATEMENT OF AFFAIRS.—In English bankruptcy practice, a bankrupt or debtor who has presented a petition for liquidation or composition must produce at the first meeting of creditors a statement of his affairs, giving a list of his creditors, secured and unsecured, with the value of the securities, a list of bills discounted, and a statement of his property. Bank. Act, 1869, § 19; Rules of Court, 1870, rr. 91, 92, 274, form 39.

Making a material omission in a statement of affairs is a misdemeanor, punishable with imprisonment for two years. Debtors Act, 1869, § 11.

STATEMENT OF CLAIM.—

§ 1. A written or printed statement by the plaintiff in an action in the English High Court, showing the facts on which he relies to support his claim against the defendant, and the relief which he claims. It is delivered to the defendant or his solicitor. The delivery of the statement of claim is usually the next step after appearance (*q. v.*), and is the commencement of the pleadings (*q. v.*)

The next step in the action is the statement of defense (*q. v.*)

§ 2. **Notice in lieu of statement of claim.**—If the writ is specially indorsed, the plaintiff may, in lieu of delivering a statement of claim, deliver a notice to the effect that his claim is that which appears by the indorsement; but he may be ordered to deliver a further statement. (Rules of Court, xxi. 4.) If the defendant in appearing states that he does not require the delivery of a statement of claim, the plaintiff need not deliver one, but he may if he likes, at his own risk as to costs. (*Id.* xix. 2, xxi. 1.) A statement of claim also becomes unnecessary if the parties agree to a special case (*q. v.*), or if the plaintiff obtains judgment under Order xiv. See JUDGMENT, § 9.

§ 3. If the defendant does not enter an appearance, and the action is one in which the plaintiff

cannot sign judgment for default of appearance (as where it is an action for an account, redemption or the like), the plaintiff must file the statement of claim with the proper officer of the court, and set down the action on motion for judgment. Rules of Court, xiii. 9, xix. 6, xxix. 10. See ACTION; JOINER, § 1; RELIEF; WRIT OF SUMMONS.

STATEMENT OF DEFENSE.—

§ 1. In the practice of the English High Court, where the defendant in an action does not demur to the whole of the plaintiff's claim, he delivers a pleading called a "statement of defense." The statement of defense deals with the allegations contained in the statement of claim (or the indorsement on the writ if there is no statement of claim), admitting or denying them, and, if necessary, stating fresh facts in explanation or avoidance of those alleged by the plaintiff.

§ 2. **Defense and counter-claim.—Defense and demurrer.**—If the defendant wishes to set up a counter-claim (*q. v.*) he adds it to his defense, (Rules of Court, xix. 2, 3, xxii.) and the pleading is then called a "statement of defense and counter-claim." If he desires to demur to part of the statement of claim, and put in a defense as to the rest, he combines the defense and demurrer in one pleading. *Id.* xxviii. 4. See PLEADING.

STATEMENT OF PARTICULARS.

—In English practice, when the plaintiff claims a debt or liquidated demand, but has not indorsed the writ specially (*i. e.* indorsed on it the particulars of his claim under Order iii. r. 6), and the defendant fails to appear, the plaintiff may file a statement of the particulars of his claim, and after eight days enter judgment for the amount, as if the writ had been specially indorsed. Rules of Court, xiii. 5. See WRIT OF SUMMONS.

STATEMENT OF REPLY.—See REPLY.

STATESMAN.—A freeholder and farmer in Cumberland.

STATICS.—The science which considers the weight of bodies.

STATIM.—Immediately.

STATING, (distinguished from "showing"). 3 How. (N. Y.) Pr. 297.

STATING PART OF A BILL.—

That part of a bill in Chancery in which the plaintiff states simply the facts of his case; and it is distinguished from the charging part of the bill and from the prayer.

STATION, (defined). 4 Otto (U. S.) 219, 220 41 Conn. 134.

— (in army regulation of 1863). 15 Ct of Cl. 264.

STATION, NAVAL, (defined). 13 East 585.

STATIONARIUS.—The same as *stagar-ius* (*q. v.*)

STATIONARY, (defined). 1 Col. T. 160.
— (what is). 35 Ala. 704.

STATIONERS' HALL.—The Stat. 5 and 6 Vict. c. 45, authorizes, in every case of copyright, the registration of the title of the proprietor at stationers' hall, and provides that, without previous registration, no action shall be commenced, though an omission to register is not otherwise to affect the copyright itself. It was founded A. D. 1553. 2 Hall. Hist. Lit. pt. 2, c. viii., p. 366; 3 Steph. Com. (7 edit.) 37.

STATIST.—A statesman; a politician; one skilled in government.

STATISTIC, or STATISTICAL.—Political.

STATISTICS.—That part of political science which is concerned in collecting and arranging facts illustrative of the condition and resources of a State. The subject is sometimes divided into (1) historical statistics, or facts which illustrate the former condition of a State; (2) statistics of population; (3) of revenue; (4) of trade, commerce, and navigation; (5) of the moral, social and physical condition of the people. See Knight Cyclop.

It has been observed that neither the derivation of this word, the meanings of its collaterals (of *statist* especially), nor the wants of our language, which has no word comprehending the whole of political science, warrant this restriction.—*Encycl. Lond.*

STATU LIBER.—In the civil law, a slave made free or enfranchised by testament conditionally.

STATUS.—

§ 1. The status of a person is his legal position or condition. Thus, when we say that the status of a woman after a decree *nisi* for the dissolution of her marriage with her husband has been made, but before it has been made absolute, is that of a married woman, we mean that she has the same legal rights, liabilities and disabilities as an ordinary married woman. (*Norman v. Villars*, 2 Ex. D. 359.) The term is chiefly applied to persons under disability (*q. v.*), or persons who have some peculiar condition which prevents the general law from applying to them in the same way as it does to ordinary persons.

§ 2. The question of status is of importance in jurisprudence, because it is generally treated as a basis for the classification of law, according as it applies to ordinary persons (general law, normal law, law of things), or to persons having a status, *i. e.* a disability or peculiar legal condition, such as infants, married women, lunatics, convicts, bankrupts, aliens, public officers, &c., (particular law, abnormal law, law of persons.) See *Holl. Jur.* 83 *et seq.*, where the opinions of other writers are referred to and criticised. See, also, *Kuntze Excursus* 369.

§ 3. "Status" is sometimes applied by analogy to things, as where we speak of a house having acquired the status of an ancient building. *Angus v. Dalton*, 3 Q. B. D. 100. See **ANCIENT HOUSES**, &c.

STATUS DE MANERIO.—The assembly of the tenants in the court of the lord of a manor, in order to do their customary suit.

STATUS QUO.—The existing state of things at any given date. *Status quo ante bellum*, the state of things before the war.

Statuta pro publico commodo late interpretantur (*Jenk. Cent.* 21): Statutes made for the public good ought to be liberally construed.

STATUTABLE, or STATUTORY, is that which is introduced or governed by statute law, as opposed to the common law or equity. Thus, a court is said to have statutory jurisdiction when jurisdiction is given to it in certain matters by act of parliament. (See **PETITION**, § 4.) For other examples, see **CONVEYANCE**, §§ 5, 8; **DECLARATION**, § 6; **MORTGAGE**, § 17.

STATUTE.—

§ 1. A statute is technically the same thing as an act of parliament or congress (*q. v.*), though in practice the term is usually confined to public acts. *Cox Inst.* 19.

In this sense statutes are of the following kinds:

§ 2. A statute is said to be "declaratory," when it does not profess to make any alteration in the existing law, but merely to declare or explain what it is; "remedial," when it alters the common law (1 Bl. Com. 86); "amending," when it alters the statute law; "consolidating,"

when it consolidates or throws together, into one statute, several previous statutes relating to the same subject-matter, with or without alterations of substance, (for an instance, *see* the English Settled Estates Act, 1877;) "disabling," or "restraining," when it restrains the alienation of property, and "enabling," when it removes a restriction or disability, (these terms are especially applied to the statutes relating to leases by bishops, colleges, vicars, tenants in tail, &c. Co. Litt. 44a; 2 Bl. Com. 318 *et seq.*; 2 Steph. Com. 734 *et seq.*; Philim. Ecc. L. 1645; Woodf. L. & T. 20;) "penal," when it imposes a penalty or forfeiture (3 Bl. Com. 161), as in the case of the statutes relating to game, smuggling, the profanation of the Lord's day, &c. *See* ACTION, § 9; INFORMER; PENALTY; SUNDAY.

§ 3. Collections of the English public general statutes, called the "Statutes at Large," have been published by various editors, the most well known being that by Ruffhead. An edition of the statutes from Magna Charta to the end of Queen Anne's reign has been printed by the Record Commissioners from the original records, under the title of the Statutes of the Realm; and an edition of the statutes, prepared by the Statute Law Committee, with all repealed acts and parts of acts omitted, has been published by government under the title of Statutes Revised, as a preparation towards an authoritative consolidation of the whole statute law.

As to statute law, *see* LAW, § 4.

The principal works on statutes and their interpretation are—Coke's Second Inst.; Barrington on the Statutes; Dwaris on Statutes; Maxwell on the Interpretation of Statutes; and Hardcastle on Statutory Law.

§ 4. "Statute" also sometimes means a kind of bond or obligation of record, being an abbreviation for "statute merchant" or "statute staple" (*q. v.*)

STATUTE, (how construed). 12 Pet. (U. S.) 72; 1 Harr. (N. J.) 286.

—(includes "ordinance"). 2 Civ. Pro. (N. Y.) 126.

—(distinguished from "constitution"). 1 Abb. U. S. Pr. 170.

—(effect of on the common law). 5 Cow. (N. Y.) 168.

—(when begins to operate). 1 Halst. (N. J.) 383; 4 T. R. 600.

—(lessening the time for exercising a previously existing right is constitutional). 1 Hill (N. Y.) 324.

STATUTE, AFFIRMATIVE, (does not take away the common law). 14 Wend. (N. Y.) 255.

STATUTE BOOK, (when is *prima facie* evidence of the law). 3 Pick. (Mass.) 293.

STATUTE FAIR.—A fair at which laborers of both sexes stood and offered themselves for hire; sometimes called also "Mop."

STATUTE MERCHANT—STATUTE STAPLE.—A statute merchant is a bond acknowledged before the chief magistrate of some trading town pursuant to the statute *De mercatoribus*, 13 Edw. I. (whence the name). A statute staple is a bond acknowledged pursuant to 27 Edw. III. c. 9, before the mayor of the staple, that is to say, the grand mart for the principal commodities or manufactures of the kingdom, formerly held by act of parliament in certain trading towns. They were both originally intended to encourage trade by providing a speedy remedy for recovering debts. Every statute is required by the act to be sealed with the seal of the debtor and of the king, and enrolled. It is therefore a bond of record, (*see* RECORD; ROLLS,) and the addition of the king's seal made it of so high a nature that on failure of payment by the debtor at the day assigned, execution might be awarded without any preliminary proceedings, whereby not only the body of the debtor might be imprisoned and his goods seized in satisfaction of the debt, but also his lands might be delivered to the creditor till out of the rents and profits the debt was satisfied; during that time the creditor was called "tenant by statute merchant" or "statute staple," and had a chattel interest in the lands. (*See* 2 Bl. Com. 160; 2 Wms. Saund. 216; Shep. Touch. 353. *See* ESTATE, § 5.) Statutes merchant and statutes staple formerly charged the land of the debtor; but this privilege has been abolished. (Stat. 27 and 28 Vict. c. 112. *See* JUDGMENT, § 16.) It seems that statutes merchant and staple are still payable, on the death of the debtor, in priority to his ordinary debts. Statutes merchant and statutes staple are, however, now quite obsolete. Wms. Pers. Prop. 130; Wms. Real Prop. 90. *See* RECOGNIZANCE.

STATUTE OF ALLEGIANCE DE FACTO.—An act of 11 Hen. VII. c. 1, requiring subjects to give their allegiance to the actual king for the time being, and protecting them in so doing. *See* ALLEGIANCE.

STATUTE OF FRAUDS.—The Stat. 29 Car. II. c. 3, passed "for the prevention of frauds and perjuries." With this object it enacts (§§ 1 and 2) that leases of lands, tenements or hereditaments (except leases not exceeding three years, reserving a rent of at least two-thirds the value of the land) shall have the force of leases at will only, unless they are put in writing and signed by the parties or their agents. Section 3 requires assignments and surrenders of leases and interests in land (not being copyholds, &c.,) to be in writing. Section 4 enacts that no action shall be brought upon any special promise by an executor or administrator to answer

damages out of his own estate, or upon a guarantee, or upon an agreement made in consideration of marriage, or upon any contract or sale of lands, &c., or any interest in or concerning them, or upon any agreement that is not to be performed within a year, unless the agreement is in writing and signed by the party to be charged, or his agent. Sections 5 and 6, and 19 to 23, as to wills, &c., are no longer in force (*see* WILL). Sections 7 and 9 require declarations or creations of trusts of lands, &c., and all assignments of trusts, to be in writing, signed by the party. Section 8 exempts trusts arising by implication of law. Sections 10 and 11 made the lands of a *cestui que trust* liable to his judgments and obligations. Section 12 enacts that estates *pur auter vie* shall be devisable and liable to the owner's debts, and if not otherwise disposed of shall go to his personal representatives. Section 16 enacts that no writ of execution against goods shall bind the property therein until the writ is delivered to the sheriff to be executed. Section 17 enacts that no contract for the sale of any goods, wares and merchandises for the price of £10 or upwards shall be good unless the buyer accept and receive part of the goods so sold, or give something in earnest or part payment, or unless some note or memorandum of the contract be made and signed by the parties to be charged, or their agents. The remaining sections are unimportant. Sections 1, 2 and 3 must be read in connection with Stat. 8 and 9 Vict. c. 106, which enacts that all leases required to be in writing, and all assignments of chattel interests in land, (not being copyhold, &c.,) must be made by deed. Section 4 must be read in connection with Stat. 19 and 20 Vict. c. 97, which makes it unnecessary that the consideration for a guarantee should appear in writing. Section 12 was supplemented by Stat. 14 Geo. II. c. 20, § 9, and superseded by §§ 3 and 6 of the English Wills Act, 1837. (*See* OCCUPANCY, § 3.) The 16th section has been modified by Stat. 19 and 20 Vict. c. 97, so as to protect *bonâ fide* purchasers of goods not actually seised under an execution. The 17th section has been supplemented by Lord Tenterden's Act (9 Geo. IV. c. 14), which declares that its provisions shall extend to all contracts for the

sale of goods of the value of £10 and upwards, notwithstanding the goods are to be delivered, or made, procured and delivered, at a future time. (As to the statute generally, *see* Agnew on the Statute of Frauds. As to the sections relating to contracts, *see* Smith on Contracts and Chitty on Contracts, *passim*.) Part of § 10 and § 18 (17 in the Revised Statutes) have been repealed by the Statute Law Revision Act, 1881.

STATUTE OF USES.—*See* USE.

STATUTE, PERSONAL, (distinguished from "real statute"). 2 Kent Com. 456.
STATUTE, RETROSPECTIVE, (when void). 4 Paige (N. Y.) 323.

STATUTE ROLL.—A roll upon which an English statute, after receiving the royal assent, was formally entered.

STATUTE STAPLE.—*See* STATUTE MERCHANT.

STATUTES OF DISTRIBUTION.—*See* ADVANCEMENT, § 2; DISTRIBUTION; NEXT OF KIN, § 2.

STATUTES OF ENGLAND, (in New York constitution). 6 Pet. (U. S.) 110.

STATUTES OF LIMITATION.—*See* LIMITATION OF ACTIONS.

STATUTES OF LIMITATION, (defined). 39 Ga. 405.

STATUTI.—In the civil law, advocates, members of the college.

STATUTO MERCATORIO.—*See* DE STATUTO MERCATORIO.

STATUTO STAPULÆ.—*See* DE STATUTO STAPULÆ; STATUTE MERCHANT.

STATUTORY AWARD, (defined). 23 Ind. 548.
STATUTORY DEFINITIONS, (of crimes, should be adhered to). 2 Minn. 123.

STATUTORY EXPOSITION.—When the language of a statute is ambiguous, and any subsequent enactment involves a particular interpretation of the former act, it is said to contain a *statutory* exposition of the former act.

STATUTORY OBLIGATION.—An obligation arising under a statute. It may be either to pay money or to perform certain acts, *e. g.* maintain fences, erect accommodation works, and the like. The obligation does not usually attach until the

happening of some event or the doing of some act by the party obliged. *See* OBLIGATION.

STATUTORY RELEASE.—A conveyance which superseded the old compound assurance by lease and release. It was created by the 4 and 5 Vict. c. 21, which abolished the lease for a year.

STATUTUM.—A statute; an act of parliament.

Statutum affirmativum non derogat communi legi (Jenk. Cent. 24): An affirmative statute does not derogate from the common law.

STATUTUM DE MERCATORIBUS.—The statute of Acton Burnell (q. v.)

Statutum ex gratia regis dicitur, quando rex dignatur cedere de jure suo regio, pro commodo et quiete populi sui (2 Inst. 378): A statute is said to be by the grace of the king, when the king deigns to yield some portion of his royal rights for the good and quiet of his people.

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis (10 Co. 101): When the words of a statute are special, but the reason of it general, it is to be understood generally.

STATUTUM HIBERNIÆ DE CO-HÆREDIBUS.—The Stat. 14 Hen. III. The third public act in the statute book. It has been pronounced not to be a statute. In the form of it, it appears to be an instruction given by the king to his justices in Ireland, directing them how to proceed in a certain point where they entertained a doubt. It seems the justices itinerant in that country had a doubt, when land descended to sisters, whether the younger sisters ought to hold of the eldest, and do homage to her for their several portions, or of the chief lord, and do homage to him; and certain knights had been sent over to know what the practice was in England in such a case. 1 Reeves Hist. Eng. Law 259.

STATUTUM SESSIONUM.—The statute sessions. A meeting in every hundred of constables and householders, by custom, for the ordering of servants, and debating of differences between masters and servants, rating of wages, &c. 5 Eliz. c. 4.

Statutum speciale statuto speciali non derogat (Jenk. Cent. 199): One special statute does not take from another special statute.

STATUTUM WALLIÆ.—The Statute of Wales, passed 12 Edw. I., being a sort of constitution for the principality of Wales. *See* 2 Reeves Hist. Eng. Law 93, 99.

STAUURUM.—A store, or stock of cattle. (Dyer 110.) A term of common occurrence in the accounts of monastic establishments.—*Cowell*

STAY.—

§ 1. A stay of proceedings in an action is a suspension of them; thus, if the plaintiff is ordered to do something and fails to do it, the proceedings may be ordered to be stayed until he complies with the order. So the court may order execution to be stayed until an appeal is decided. A stay of proceedings is sometimes produced *ipso facto*, without an express order to that effect, as where a party obtains a rule *nisi* for a new trial.

§ 2. In English practice, "stay of proceedings" also sometimes means a total discontinuance of the action; thus, if an action in the Queen's Bench is compromised, an order staying the proceedings is generally obtained. (*See* Arch. Pr. 1100 *et seq.*) In the Chancery Division the term is also so used, but in strictness it is only accurate when a decree or judgment has been given, for in such a case the suit or action cannot be dismissed, because the court has adjudicated on it, and therefore all that can be done is to stay proceedings under the decree or judgment. Before decree or judgment the proper way of disposing of an action is either by discontinuance (q. v.) or by an order dismissing the action.

STAY, (equivalent to "supersedeas"). 1 Houst. (Del.) 594.

STAY OF EXECUTION.—*See* STAY, § 1; *also*, DE VENTRE INSPICIENDO; JURY, § 10.

STAY OF PROCEEDINGS.—*See* STAY, §§ 1, 2.

STEAL, (synonymous with "theft"). 9 Tex. App. 463.

— (in a statute). 12 Tex. 540.

STEAL, PLUNDER AND, (in crimes act). Sprague (U. S.) 196.

STEALING.—*See* EMBEZZLEMENT; LARCENY; ROBBERY.

STEALING, (does not *ex vi termini* convey the charge of felony). 3 Wheel. Cr. Cas. 183.

STEALING CHILDREN.—*See* KIDNAPPING.

STEAM SAW-MILL, (in an insurance policy). 20 Barb. (N. Y.) 635.

STEAMBOAT, (in navigation laws). 4 Sandf. (N. Y.) 492, 506.

STEAMBOAT CLAUSE, (in an insurance policy, construction of). 32 Pa. St. 351.

STEAMSHIP, (in bill of lading). L. R. 7 Q. B. 566.

STEEL-BOW GOODS.—Corn, cattle, straw, and implements of husbandry, let or delivered by a landlord to a tenant, by which the tenant is enabled to stock and work a farm; in consideration of which he becomes bound to return articles, equal in quantity and quality, at the expiration of the lease.—*Bell Dict.*

STEER, (defined). 2 Mont. T. 543, 546; McCahon (Kans.) 100.

STELLIONATE.—A kind of crime which is committed by a deceitful selling of a thing; as if a man should sell as his own estate that which is another's.

In the Roman law, the making a second mortgage without giving notice of the first; but the crime was not committed if the land were equal in value to all the charges upon it. D. 13.

STEP-DAUGHTER.—Step, *i. e. vice loco*, in the place or stead of, *e. g.* the daughter of one's wife or husband by a former husband or wife.

STEP-FATHER.—The husband of one's mother, who is not one's father.

STEP-MOTHER.—The wife of one's father, who is not one's mother.

STEP-SON.—The son of one's wife or husband by a former marriage.

STERILITY.—Barrenness; incapacity to bear children. See **IMPOTENCY**.

STERILITY, (defined). 2 Mau. & Sel. 359.

STERBRECHE, or **STREBRICH.**—The breaking, obstructing, or straitening of a way.—*Termes de la Ley*.

STERLING.—Genuine; having passed the test; money; standard-rate.

STERLING MONEY, (award payable in). Coxe (N. J.) 84.

STET BILLA.—If the plaintiff in a plaint in the Mayor's Court of London has attached property belonging to the defendant and obtained execution against the garnishee, the defendant, if he wishes to contest the plaintiff's claim, and obtain restoration of his property, must issue a *scire facias ad disprobandum debitum* (see **SCIRE FACIAS**, § 13); if the only question to be tried is the plaintiff's debt, the plaintiff in appearing to the *scire facias* prays *stet billa*, "that his bill original," *i. e.* his original plaint, "may stand, and that the defendant may plead thereto;" the action then proceeds in the usual way as if the proceedings in attachment (which are founded on a fictitious default of the defendant in appearing to the plaint) had not taken place. Brand. For. Att. 115 and forms. See **FOREIGN ATTACHMENT**.

STET PROCESSUS, in the practice of the old common law courts, was an entry on the record in an action whereby it was ordered, with the consent of the parties, that all further proceedings in the action be stayed. It could only be made with the consent of both parties, and apparently could only be entered as to the whole record. Arch. Pr. (3 edit.) 413; Quarrington v. Arthur, 11 Mees. & W. 491.

STETHE, or **STEDEL.**—Properly, a bank of a river, and many times a place. Co. Litt. 4b.

STEVEDORE.—A person employed to stow a cargo on board a ship.

STEWARD was formerly used to denote an officer of the crown, or a feudal lord, who acted as keeper of a court of justice, (Co. Litt. 61a; Co. Copyh. § 45;) as, *e. g.* the lord high steward (*q. v.*) At the present day the only important example of the office occurs in the case of manors, for every manor has a steward, appointed by the lord, who theoretically acts as judge of the Customary Court Baron and the Court Leet, and as registrar of the freeholders' Court Baron. Practically, however, his duties are rather ministerial than judicial, for his chief function is to receive surrenders and grant admittances to the copyhold lands of the manor, and keep the court roll. Elt. Copyh. 254. See **COPYHOLD**; **COURT BARON**; **COURT LEET**; **MANOR**.

STEWARD OF THE HOUSEHOLD.—See **MARSHALSEA**.

STEWARTRY.—In the Scotch law was synonymous with the English word "county." Thus, "any shire or stewartry in Scotland," is used in the twelfth section of 5 and 6 Vict. c. 35 (the Income and Property Tax Act); and by 1 Vict. c. 39, it is enacted that the word "county" occurring in any future or existing act shall comprehend and apply "to any stewartry in Scotland, excepting where otherwise specially provided, or where there is anything in the subject or context repugnant to such meaning or application."—*Brown*. See **COUNTY**.

STEWES.—(1) Certain brothels anciently permitted in England, suppressed by Henry VIII. (2) Breeding-places for tame pheasants.

STICKLER.—(1) An inferior officer who cuts wood within the royal parks of Clarendon.—*Cowell*. An arbitrator. (2) An obstinate contender about anything.

STICKS, (in a letter). 30 Ohio St. 16, 19.

STIFLING A PROSECUTION.—Agreeing, in consideration of receiving a pecuniary or other advantage, to abstain from prosecuting a person for an offense not giving rise to a civil remedy, *e. g.* perjury. As a general rule such an agreement invalidates any transaction of which it forms part. *Keir v. Leeman*, 6 Q. B.

308; *Wallace v. Hardacre*, 1 Campb. 45; *Williams v. Bayley*, L. R. 1 H. L. 200. See COMPOUND, § 3; MISPRISION, §§ 2, 3.

STILLICIDIUM.—In the civil law, the water that falls from the roof of a house in scattered drops.

STINT.—

§ 1. **Stinted common.**—A stint is a limit, and, therefore, a stinted right of common of pasture is one where the number of beasts allowed to be put on the common by each commoner is limited, as opposed to common *sans nombre*. (See *SANS NOMBRE*.) A right of pasture may also be stinted in respect of time. Woolr. Com. 25. See VIEW AND DELIVERY.

§ 2. **Stinted pasture.**—Stint is also used in a special sense to denote the right of pasture of one of several persons who are tenants in common of land which they use as a common pasture ground for their cattle. Stinted pastures are grazing lands in moors, downs and wastes, which produce no crop, and which are open to each person who has a share in the pasture for a stinted or limited number of cattle. They are usually closed at certain seasons of the year for the better growth of the pasture, but are never held in severalty. The right of each joint owner of the herbage is known as a stint or cattle-gate. Elt. Com. 33–35.

§ 3. A stint is not a common, but a corporeal hereditament, and may be held for either freehold or customary estates. Elt. Com. 35. See COMMON; HEREDITAMENT, § 2.

§ 4. Sometimes the lord of a manor has a “stint” or limited right of pasture on the waste, during a certain part of the year. Elt. Com. 40. See SHEEPWALK.

STIPEND.—A salary; settled pay; in English and Scotch law, a provision made for the support of the clergy.

STIPENDIARY ESTATES.—Estates granted in return for services, generally of a military kind. 1 Steph. Com. (7 edit.) 174.

STIPENDIARY MAGISTRATES.—Paid magistrates. (As to these, see 2 and 3 Vict. c. 71, § 9; 11 and 12 *Id.* 42, § 29; 17 and 18 *Id.* 20; 18 and 19 *Id.* 126, §§ 16, 19; 21 and 22 *Id.* 73.) By 26 and 27 Vict. c. 97, provision is made enabling stipendiary magistrates to be appointed in boroughs of more than 25,000 inhabitants. As to their deputies, see 32 and 33 *Id.* 34.

STIPENDIUM.—Wages; pay.

STIPULATED AND CONDITIONED, (in an agreement). 1 Man. & Ry. 694.

STIPULATED AND DECLARED, (in a policy of insurance). 6 J. B. Moo. 199.

STIPULATED DAMAGE.—Liquidated damage (*q. v.*)

STIPULATED DAMAGES, (what are). 16 Serg. & R. (Pa.) 322.

— (distinguished from “penalty”). 4 Wheel. Am. C. L. 119.

STIPULATED, IT IS, (in an agreement). 8 Barn. & C. 308.

STIPULATIO.—In the Roman law, *stipulatio* was the verbal contract (*verbis obligatio*)—and was the most solemn and formal of all the contracts in that system of jurisprudence. It was entered into by question and corresponding answer thereto, by the parties, both being present at the same time, and usually by such words as “*spondes? spondeo*,” “*promittis? promitto*,” and the like.—*Brown*.

STIPULATIO AQUILIANA.—In the Roman law, a particular application of the *stipulatio*, and was used to collect together into one verbal contract all the liabilities of every kind and quality of the debtor, with a view to their being released or discharged by an *acceptilatio*, that mode of discharge being applicable only to the verbal contract.—*Brown*.

STIPULATION.—A bargain or agreement; also, a recognizance of certain fidejussors in the nature of bail, taken in the admiralty courts.

STIPULATOR.—In the civil law, the party who asked the question in the contract of stipulation; the other party, or he who answered, being called the *promissor*. But in a more general sense, the term was applied to both the parties.—*Calv. Lex*.

STIREMANNUS.—A pilot or steersman.—*Domesd.*

STIRPES.—Taking property by representation is called “succession *per stirpes*,” in opposition to taking in one’s own right, or as a principal, which is termed succession *per capita*. It is called “succession *per stirpes*,” because it is according to the roots; *i. e.* all the branches inherit the same share that their root, whom they represent, would have done. See PER STIRPES.

STOCK.—

§ 1. “Stock” primarily means a common fund belonging to a partnership, corporation or trading company, and used to enable it to carry on its business. (See a form of partnership deed in the Complete Clerk, 845. See FUND.) Thus, what is now generally called the “capital” of a company was formerly called its “joint-stock,” meaning the common or joint fund contributed by the members. (See JOINT STOCK COMPANY.) The capital of a company is

generally divided into shares (*q. v.*), so that "shares" and "stock" are in one sense the same thing, (*see* *Morrice v. Aylmer*, L. R. 7 H. L. 717;) at the present day, however, "stock" is generally used, in England, in its secondary sense (*infra*, § 2) as opposed to "shares."

§ 2. In its secondary sense, "stock" signifies, in England, a fund or capital which is capable of being divided into and held in any irregular amount. Thus, the ordinary government funds, (consols, new threes, &c.) are called "stocks," because a person can buy them in any amount (such as £99 19s. 11d. as well as £100). A share or debenture, on the other hand, is of a fixed amount, (such as £10, £50, £100,) and is incapable of subdivision or consolidation. Many companies, however, have the power of converting paid-up shares into stock, (English Companies Act, 1862, § 12; Companies Clauses Act, 1845, § 61;) and of converting debentures into debenture stock. *See* DEBENTURE STOCK.

§ 3. "Stock" also signifies race, lineage, or family.

STOCK, (defined). 2 Chit. Gen. Pr. 30 app.

— (is a chose in action). 5 Price 217.

— (omnium is). 2 Esp. 631; 1 Stark. 496.

— (is not money). 2 W. Bl. 684; 7 Com. Dig. 373.

— (in a will, does not include plate, furniture or linen). 11 Jur. 793.

— (bequest of, is a specific legacy). 4 Ves. 751.

— (in charter of an insurance company). 5 Cow. (N. Y.) 435.

— (in a statute). 5 Ind. 310; 17 Id. 380; 103 Mass. 545; 23 N. Y. 192, 220.

— (in a will). 33 Ind. 96; 7 Johns. (N. Y.) Ch. 258; 3 Yeates (Pa.) 486; 51 Wis. 545; 3 Ves. 310; 19 Id. 299; 4 Com. Dig. 155.

STOCK, ALL FARMING, (in a will). 5 Russ. 12.

STOCK AND CROP, (in a will). 3 Meriv. 190, 193.

STOCK AND MOVABLE PROPERTY, (in a will). 6 Dana (Ky.) 343.

STOCK AND PROPERTY IN FUNDS, (is personal property). 1 Chit. Gen. Pr. 96.

STOCK, ANNUITY, (devise of). 1 Atk. 414.

STOCK, BANK, (what is not). 10 Ves. 185, 288.

— (legacy of, is specific). 6 Pick. (Mass.) 48; 22 Id. 304.

STOCK-BROKER.—One who buys and sells stock as the agent of others. *See* BROKER, § 2.

STOCK, CAPITAL, (in charter of railroad company). 30 Ark. 693.

STOCK EXCHANGE.—The stock exchange is a private society, and its rules are therefore only binding on its members and persons dealing with them subject to those rules.

As to the legality of "time bargains" and "differences," *see* WAGER.

STOCK, FAMILY OR HOUSE, (construed). Hob. 33.

STOCK IN TRADE, (in an insurance policy). 2 Hall (N. Y.) 490; 17 N. Y. 194; 6 Wheel. Am. C. L. 206.

— (in exemption law). 19 Kan. 382.

— (in tax act). 101 Mass. 329.

— (in a will). 1 Bunb. 28.

STOCK-JOBBER.—A dealer in stock; one who buys and sells stock on his own account on speculation.

STOCK, LIVE AND DEAD, (in a will). Rob. Wills 423.

STOCK, MY, (in a will). 7 Ves. 534.

STOCK, MY FARMING, (in a will). 5 Russ. 12.

STOCK-NOTE, (defined). 12 Ill. 399.

STOCK OF HAIR, WROUGHT, RAW AND IN PROCESS, (in a policy of insurance). 120 Mass. 225, 226.

STOCK OF MY FARMS, (in a will). 17 Ch. D. 697.

STOCK OR FUNDED DEBT, (in a statute). 1 Edw. (N. Y.) 93.

STOCK, OTHER, (in a will). 9 Pick. (Mass.) 461.

STOCK, PUBLIC, (in a statute). 7 T. R. 630.

STOCK, PUBLIC OR JOINT, (what is not). 3 Stark. 158.

STOCK RENT, (promissory note payable in). Adams (N. H.) 95.

STOCK SUBSCRIPTION, (binding form of). 23 Minn. 439.

STOCK UPON HIS FARM, (in a will). 8 East 339.

STOCKHOLDER, (what constitutes). 14 Wend. (N. Y.) 24.

— (who not *bona fide*). 54 Cal. 149.

— (in a statute). 69 Ill. 502; 8 Mass. 472; 15 Id. 505; 16 Id. 9.

STOCKS.—An ignominious mode of punishment, formerly in use. 4 Bl. Com. 377.

STOLE WINDOWS, (not actionable words). 66 Me. 62.

STOLEN, (synonymous with "theft"). 9 Tex. App. 463.

STOLEN GOODS.—*See* POSSESSION, § 4; RECEIVING STOLEN GOODS.

STOP ORDER.—In English Chancery practice, when a fund (in cash, stock or other securities) is in court in a cause or proceeding, any person claiming an interest in it may apply to the court for an order to prevent it from being paid out or otherwise dealt with, without notice to the applicant. The application is generally made by summons, and (if opposed) must be

supported by an affidavit showing the applicant's interest in the fund. Stop orders differ from restraining orders and distringas notices (*q. v.*) in being applicable only to funds in court. Stop orders are also applicable to documents deposited with an officer of the court. Dan. Ch. Pr. 1543; Fish. Mort. 117. See PAYMENT INTO COURT.

STOPPAGE.—In the civil law, compensation or set-off.

STOPPAGE IN TRANSITU is the right which an unpaid vendor has to resume the possession of goods sold upon credit, where the vendee has become bankrupt or insolvent before they come into his possession. Thus, if A. orders goods of B., and B. despatches them by carrier to A.'s address, but before they have been actually delivered he hears that A. has stopped payment, then B. is allowed to countermand delivery before or at the place of destination, and to resume the possession of the goods, according to that equitable principle in the law of contract by which one party may withhold performance on the other becoming unable to fulfill his part of the contract. But it is not an unlimited right; for the vendor cannot exercise it if he has parted with documents sufficient to transfer the property, and the vendee, upon the strength of them, has sold the goods to a *bonâ fide* purchaser without notice. (Houst. St. in Tr. 1; Lickbarrow v. Mason, 2 T. R. 63; 1 H. Bl. 357; 6 East 21; Sm. Merc. Law 548 *et seq.*; Maud. & P. Mer. Sh. 309 *et seq.*) The vendor's right ceases as soon as the transitus is determined, whether by the goods arriving at their destination, or by being delivered to a person on behalf of the vendee, or by the carrier agreeing, between himself and the vendee, to hold the goods for him, not as carrier, but as his agent. *Ex parte Cooper*, 11 Ch. D. 78.

§ 2 There is also a so-called right of stoppage *in transitu* in cases where there is no transit, as where goods are sold whilst in the possession of a warehouseman, and some act remains to be done for the completion of the sale. Maud. & P. Mer. Sh. 314. See DELIVERY ORDER; DOCK WARRANT.

STOPPAGE IN TRANSITU, (defined). 57 N. H. 454; 17 Wend. (N. Y.) 504; 23 *Id.* 611.

STOPPING PAYMENT, (is not conclusive evidence of a bank's insolvency). 3 Wend. (N. Y.) 614.

STORE, (synonymous with "shop"). 18 Conn. 432; 15 Gray (Mass.) 197.

— (in a deed). 8 Allen (Mass.) 293.

— (in a lease). 128 Mass. 487.

— (premises described as, in a writ of entry). 2 N. H. 9.

— (the breaking open of, is no burglary).

4 Johns. (N. Y.) 424.

— (in crimes act). 1 Mass. 516, 517.

STORE FIXTURES, (in a policy of insurance). 16 Gray (Mass.) 359.

STOREHOUSE, (defined). 3 Ired. (N. C.) L. 570.

— (what is). 19 Ala. 527.

— (in a penal statute). 12 Bush (Ky.) 397.

STORES.—The supplies of different articles provided for the subsistence and accommodation of a ship's crew and passengers.

STORES, (in a devise). 41 Mich. 552.

STORES, SEA, (what are not). Gilp. (U. S.) 299.

STORING, (defined). 16 Barb. (N. Y.) 119; 3 N. Y. 122, 127.

— (in an insurance policy). 5 Minn. 492; 3 Harr. (N. J.) 480; 1 Hall (N. Y.) 226, 235; 6 Wend. (N. Y.) 628.

STORM, FIRE OR, (in an insurance policy). 3 Phil. (Pa.) 38.

STORY.—Joseph Story was born in 1779, at Marblehead, near Boston, in the United States of America; became member of congress in 1809, judge of the Supreme Court in 1811, professor at Harvard in 1829, and died 10th September, 1845. His principal works are: Equity Jurisprudence; Law of Bailments; Agency; Bills of Exchange; Promissory Notes; Partnership, and the Conflict of Laws. Holtz. Encycl.

STOUTHERIEFF.—In the Scotch law, forcible depredation within or near a dwelling-house.—*Bell Dict.*

STOVE, (is not a fixture). 24 Wend. (N. Y.) 191.

STOWAGE.—Lading cargo. It is the master's duty to safely place the cargo, so as not to be damaged either in the act of lading or afterwards from leakage or the motion of the vessel. Stowage on deck is improper, if that endangers either the vessel or the cargo itself; but it may be justified by the usage of trade. Stowage on deck gives no claim (unless by custom) to general average. Usually, cargo is stowed by means of "stevedores" (see STEVEDORE); but the master is required

to be himself a competent stevedore. Where a stevedore is employed, and damage results to the cargo in the process of stowage, the ship-owner or master is generally liable, but sometimes the shipper; and the question seems to depend on who is the principal employing the stevedore as his agent. *See Sandemann v. Scurr*, L. R. 2 Q. B. 86; *Kay Sh. & S.* 273-275.

STRADDLE, (in stock speculation). 83 N. Y. 95.

STRADLING v. STILES.—A burlesque report of an argument in banco, published in Martinus Scriblerius' works. It is, in part, the work of Fortescue, an eminent lawyer, who subsequently became a baron of the Exchequer.—*Wharton*.

STRAMINEUS HOMO.—A man of straw, one of no substance, put forward as bail or surety. *See MEN OF STRAW*.

STRAND.—A shore or bank of the sea or of a river.—*Cowell*.

STRANDING.—Under the memorandum (q. v.) in an ordinary policy of marine insurance, the underwriters are not liable for damage sustained by certain perishable articles, unless in consequence of a general average, or a stranding of the ship. "Stranding" does not occur when a vessel takes the ground in the ordinary and usual course of navigation, in a tideway or harbor, upon the ebbing of the tide or the like, so that she will float again on the flow of the tide; but it occurs if the vessel takes the ground by reason of some unusual or accidental occurrence, *e. g.* in consequence of an unknown or unusual obstruction in the harbor. *Wells v. Hopwood*, 3 Barn. & Ad. 20; *Letchford v. Oldham*, 5 Q. B. D. 538.

STRANDING, (what constitutes). 3 Barn. & Ad. 20, 23; 5 Barn. & Ad. 225; 4 Barn. & C. 736; 7 *Id.* 219; 3 Campb. 429; 4 Mau. & Sel. 77; 5 Q. B. D. 57; 1 Stark. 436.

— (what is not). 8 Bing. 458; 4 Mau. & Sel. 503.

— (in marine insurance policy). L. R. 7 C. P. 570; 5 Q. B. D. 538.

STRANGER.—In law, a person is said to be a stranger to a transaction when he takes no part in it, or no part producing any legal effect. Thus, a person who is not a party to a deed, contract, &c., is said to be a stranger to it. (*See PART; PRIVY*.) So, when a promise is made to a person,

but he has neither taken any trouble or charge upon himself, nor conferred any benefit on the promisor, but the trouble has been sustained or benefit conferred by another, the promisee is said to be a stranger to the consideration. Chit. Cont. 53. *See CONSIDERATION*, § 1.

STRANGER, (who is). 2 Dall. (U. S.) 92, 93.
— (in a statute). 2 Wend. (N. Y.) 607.

STRATOCRACY.—A military government.

STRATOR, or **STRETWARD**.—A surveyor of the highways.—*Mon. Ang. tom. 2, p. 187*.

STRAY.—*See ESTRAY*.

STRAY BEAST IN A SUFFERING CONDITION, (in a statute). 27 Conn. 473.

STREAM.—A current of water; a body of flowing water. The word, in its ordinary sense, includes rivers. But Callis defines a stream "a current of waters running over the level at random, and not kept in with banks or walls." (Callis on Sewers, [83,] 133. *See Ang. Waterc.* §§ 2, 4, 8, and *n.*)—*Burrill*.

STREAM, (grant of). 2 N. H. 259.
— (in laws of 1850, ch. 72, p. 81). 1 E. D. Smith (N. Y.) 588.

STREAMING FOR TIN.—The process of working tin in Cornwall and Devon. The right to stream must not be exercised so as to interfere with the rights of other private individuals, *e. g.* either by withdrawing or by polluting or choking up the water-courses or waters of others; and the Stats. 23 Hen. VIII. c. 8, and 27 Hen. VIII. c. 23, impose a penalty of £20 for the offense.—*Brown*.

STREET, (defined). 1 Blackf. (Ind.) 88; 48 Ind. 178; 74 *Id.* 104; 36 N. Y. 120; 9 Phil. (Pa.) 106; 4 Q. B. 375.

— (what is not). 79 Pa. St. 346.

— (includes sidewalks and gutters, in a statute). 56 How. (N. Y.) Pr. 416; 76 N. Y. 174, 181.

— (imports a highway). 40 Conn. 13, 25; 4 Serg. & R. (Pa.) 106.

— (on a map of a city, imports a public way). 3 Col. T. 484.

— (effect of a conveyance of land abutting on). 48 Ind. 178; 4 Mass. 589.

— (power to assess the costs of improvement of, on owners abutting). 79 Pa. St. 272.

— (in a statute). 19 Johns. (N. Y.) 134; L. R. 7 Ex. 369; 1 Ex. D. 395; 3 *Id.* 157, 160; L. R. 9 Q. B. 278; 3 Q. B. D. 376; 4 *Id.* 375; Wilberf. Stat. L. 300.

STREET IMPROVEMENTS, (in a city charter). 1 Vr. (N. J.) 74.

STREET, NEW, (in a statute). 17 Wend. (N. Y.) 651.

STREET NOT BEING A HIGHWAY, (in a statute). L. R. 9 Q. B. 4.

STREET OR PLACE, (in hackney coach act). L. R. 4 Ex. 319.

STREET, REPAVING, (in city ordinance). 9 Phil. (Pa.) 106.

STRETCHING, (in grants). 5 Johns. (N. Y.) 462; 8 *Id.* 508.

STRICT COMPLIANCE, (does not mean "literal compliance"). 2 Gr. (N. J.) 492.

STRICT SETTLEMENT.—This limits an estate to the use of the husband for life, remainder to trustees to support contingent remainders, remainder to the wife for life, remainder to other trustees for raising portions for younger children, remainder to the first and other sons in tail-male, remainder to the daughters, as tenants in common, with cross-remainders between them, remainder to the husband in fee. The usual course with conveyancers, where property of the wife is settled, is to confer on the wife a power of appointment, in the event of there being no issue, so as to 'give her the option of defeating the limitations over of her estate. The object of a strict settlement is to put it out of the power of parents to deal with the *corpus* of an estate to the prejudice of their issue. (Consult 1 Steph. Com. (7 edit.) 333.)—*Wharton*.

STRICT SETTLEMENT, (in a will). 4 Bing. N. C. 1.

STRICTISSIMI JURIS.—Of the most strict law.

STRICTUM JUS.—Mere law in contradiction to equity.

STRIKING.—

§ 1. **Jury**.—Striking a jury is what is more commonly known as nominating and reducing (*q. v.*) Lee Dict. Pr. 887.

§ 2. **Pleading**.—Striking out a pleading or part of a pleading takes place when the court makes an order to that effect, either for the purpose of amendment (*q. v.*) or to compel one of the parties to do some act. Thus, if a defendant fails to comply with an order for discovery, he is liable to have his defense struck out, and to be placed in the same position as if he had not defended the action.

STRIKING OFF THE ROLL.—

Removing the name of an attorney or solicitor from the rolls of the court, and thereby disentitling him to practice. This is done ordinarily for gross misconduct, but sometimes at the solicitor's own request. See **DISBAR**.

STRONG AND CONVINCING PROOF, (in judge's charge). 22 Minn. 351.

STRONG AND SPIRITUOUS LIQUORS, (include ale and beer). 19 How. (N. Y.) Pr. 259; 21 N. Y. 173.

STRONG HAND.—The words "with strong hand" imply a degree of criminal force, whereas the words (*vi et armis*) "with force and arms," are mere formal words in the action of trespass, and the plaintiff is not bound to prove any force. The statutes relating to forcible entries use the words, "with a strong hand," as describing that degree of force which makes an entry or detainer of lands criminal.

STRONG HAND, (what is, as applied to forcible entry and detainer). 18 Am. Dec. 141 n.

STRONG HAND, WITH, (in an indictment). 8 T. R. 362, 363.

STRUCK, (when necessary in an indictment). Stark. Cr. Pl. 99.

STRUCK JURY.—A special jury, constituted by *striking out* a certain number of names from a list previously selected by lot. See **STRIKING**, § 1.

STRUCK-OFF, (in a statute). 7 Hill (N. Y.) 431, 439.

— (in a return by sheriff). 9 Serg. & R. (Pa.) 279.

STRUCTURE, (a railroad track is). 46 Conn. 213, 218.

STRUCTURES, (swings or seats are not). 55 Cal. 159.

STRUCTURES CONNECTED THEREWITH, (in mechanics' lien law). 6 Daly (N. Y.) 234.

STRUMPET.—A harlot or courtesan. This word was anciently used for an addition; it occurs to the name of a woman in a return made by a jury in the sixth year of Henry V.—*Wharton*.

STUBBLE, (in a lease). 7 Pac. C. L. J. 672.

STUFF GOWN.—The robe worn in court by utter barristers. See **QUEEN'S COUNSEL**.

STUMP, (defined). 36 Wis. 92.

STUMPAGE CUT ON THE LAND, (in an agreement). 67 Me. 476.

STUPATION.—Rape; violation.

STUPRUM.—In the civil law, every union of the sexes forbidden by morality.

STURGEON.—A royal fish, which, when either thrown ashore or caught near the coast, is the property of the sovereign. 2 Steph. Com. (7 edit.) 19 n., 540.

STYLE.—As a verb, to call, name, or entitle one; as a noun, the title or appellation of a person. See **NEW STYLE**; **CALENDAR**; **NEW YEAR'S DAY**.

SUABLE.—That which may be sued.

SUABLE CAUSE OF ACTION, (means mature). 82 N. Y. 18.

SUB.—Under; upon.

SUB-AGENT—SUB-CONTRACTOR.—

§ 1. When an agent employs a person as his agent, to assist him in transacting the affairs of his principal, the person so employed is called a "sub-agent." In the absence of an agreement to the contrary, there is no privity between the principal and the sub-agent; therefore, the principal is not liable to the sub-agent for his remuneration, and he cannot sue the sub-agent for negligence or misconduct; he must sue the agent. (*See Russ. Merc. Ag. 210.*) But if the agent has an express or implied authority to employ a sub-agent, privity of contract arises between the principal and the sub-agent, and the principal may sue the sub-agent for misconduct. *De Bussche v. Alt*, 8 Ch. D. 287.

§ 2. Similarly, when a contractor makes a contract with a sub-contractor to carry out his contract, or part of it, there is no privity between the principal contractee and the sub-contractor. (*Goslin v. Agricultural Hall Co.*, 1 C. P. D. 482.) As to the relations between a contractor and his servants, and between the latter and the contractor's principal, *see Woolley v. Metr. D. Ry. Co.*, 2 Ex. D. 384; *Pearson v. Cox*, 2 C. P. D. 369.

SUB-BOIS.—Coppice-wood. 2 Inst. 642. *See SYLVA CÆDUA.*

SUB-CONTRACT.—A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a stranger. *Per Heath, J.*, 1 H. Bl. 37, 45.

SUB CONDITIONE.—Upon condition; under condition.

SUB DISJUNCTIONE.—In the alternative.

SUB JUDICE.—Under judicial consideration; a matter as yet undetermined.

SUB-LEASE.—*See LEASE*, § 3.

SUB MODO.—Under condition or restriction.

SUB-MORTGAGES.—When a mortgagee borrows money upon the security (or any part of the security) held by himself to secure the loan made by himself, he effects what is called a "sub-mortgage." For example, an equitable mortgagee by deposit may deposit with any third person by way of securing an advance made by the latter to himself all or any of the title deeds deposited with him by the original mortgagor. *See MORTGAGE*, § 11.

SUB PEDE SIGILLI.—Under the foot of the seal.

SUB POTESTATE.—Under power; subject to the power of another; as a slave, wife, or child.

SUB SIGILLO.—Under seal.

SUB SILENTIO.—In silence.

SUB-TENANT.—An under tenant.

SUBALTERN.—An officer who exercises his authority under the superintendence and control of a superior.—*Bouvier*.

SUBDITUS.—A vassal; a dependent; any one under the power of another.—*Spel. Gloss.*

SUBDUOT.—In English probate practice, to subduct a *caveat* is to withdraw it. *Brown Prob. Pr.* 265.

SUBINFÉUDATION, while it was allowed, was what took place when a tenant in fee-simple of land granted the whole or part of it to another person in fee-simple, to hold of him as his tenant, so that the relation of tenure, with its incidents of fealty, services, &c., was created between them. The practice of subinféudation being found to decrease the power and wealth of the great landholders (the barons), it was abolished in Edward I.'s reign by the statute known as *Quia Emptores* (g. v.) (Wms. Seis. 8, 21.) Therefore, at the present day, if A. holds land of B. in fee-simple, and wishes to grant it to C., he can only do so on the term that C. shall hold it of B., and not of himself (A.) *See FEUDAL SYSTEM; SEIGNORY; TENURE.*

SUBJACENT.—*See SUPPORT.*

SUBJECT.—In logic, that concerning which the affirmation in a proposition is made; the first word in a proposition.—*Mill Log. See PREDICATE.*

SUBJECT, (distinguished from "inhabitant"). 20 Johns. (N. Y.) 324.

—(synonymous with "matters" in section 19, article 4, of the constitution of Indiana). 24 Ind. 26.

—(in a statute). 1 Dall. (U. S.) 60.

SUBJECT-MATTER.—The thing in controversy, or the matter spoken or written about.

SUBJECT-MATTER, (synonymous with "cause of action"). 15 N. Y. 505, 509.

— (in the practice act). 109 Mass. 211.

SUBJECT-MATTER IN DISPUTE, (defined). 72 N. Y. 217, 228.

SUBJECT-MATTER INVOLVED, (in section 309 of the code). 7 Robt. (N. Y.) 578.

SUBJECT-MATTER OF A LITIGATION, (defined). 41 Mich. 90.

SUBJECT OF ACTION, (in Mont. T. Code). 3 Mont. T. 142.

SUBJECT OF THE ACTION, (in New York Code). 88 N. Y. 216.

SUBJECT TO A MORTGAGE, (in a mortgage). 115 Mass. 120.

SUBJECT TO ALL DEMANDS ON THE SAME, (in act regarding intestates). 1 Watts (Pa.) 486.

SUBJECT TO AND CHARGED AND CHARGEABLE WITH, (in a will). 3 Bing. 392.

SUBJECT TO B'S MORTGAGE, (in a mortgage). 104 Mass. 249.

SUBJECT TO EXECUTION, (as used in statute allowing discharge of debtor on his oath). 6 Blackf. (Ind.) 163.

SUBJECT TO PAYMENT OF RENT, (in a perpetual lease). 5 Pa. St. 204.

SUBJECT TO THE INCUMBRANCES THEREUPON, (devise of land). 2 P. Wms. 385.

SUBJECT TO THE ORDER OF A., (in an agreement to accept a bill of exchange). 1 Am. L. J. 489.

SUBJECTS.—The members of a commonwealth under a sovereign.

SUBJECTS, (when synonymous with "citizens" or "inhabitants"). 2 Wheat. (U. S.) 227, 245.

Sublata causa tollitur effectus (Co. Litt. 303): The cause being removed the effect ceases.

Sublata veneratione magistratum, respublica ruit (Jenk. Cent. 43): When respect for magistrates is taken away, the commonwealth falls.

Sublato fundamento cadit opus (Jenk. Cent. 106): The foundation being removed, the superstructure falls.

Sublato principali tollitur adjunctum (Co. Litt.): The principal being taken away, its adjunct is also taken away.

SUBMISSION.—A submission to arbitration is an instrument by which a dispute or question is referred to arbitration. (See **ARBITRATION**.) When the reference is made by the order of a court or judge, the order itself is sometimes called a "submission;" but, more generally, that word denotes an agreement between the

parties. Such an agreement may be either general (*i. e.* an agreement to refer to arbitration all future disputes arising out of a specified matter), or a particular submission (*i. e.* an agreement to refer to arbitration a dispute which has already arisen). A general submission is sometimes contained in articles of partnership and other agreements extending over a long period. A particular submission may be revoked by either party, unless there is an agreement to make the submission a rule of court. A general submission cannot be revoked in any case. *Piercy v. Young*, 14 Ch. D. 200. See **RULE OF COURT**.

SUBMISSION, (not synonymous with "consent"). 9 Car. & P. 722.

SUBMISSION TO ARBITRATION, (what constitutes). 6 Watts (Pa.) 357.

— (effect of). 12 Wend. (N. Y.) 503; 5 Munf. (Va.) 10.

SUBMIT.—To propound, as an advocate, a proposition for the approval of the court.

SUBNERVARE.—To hamstring by cutting the sinews of the legs and thighs.

It was an old custom *meretrices et invidiosas mulieres subnervare.*—*Wharton*

SUBNOTATION.—A rescript (*q. v.*)

SUBORDINATE CLAUSE.—See **Co-ORDINATE**.

SUBORNATION OF PERJURY is the offense of procuring a person to commit perjury, provided he actually commits it. (3 Russ. Cr. & M. 1; Steph. Cr. Dig. 84.) The offense is a misdemeanor, punishable in the same way as perjury (*q. v.*)

SUBPCENA.—

§ 1. A writ issued in an action or suit requiring the person to whom it is directed to be present at a specified place and time, and for a specified purpose, under a penalty (*sub pena*) for disobedience. The varieties of *subpcena* now in use are: (1) The *subpcena ad testificandum*, used for the purpose of compelling a witness to attend and give evidence, either in court or before an examiner or referee; (2) the *subpcena duces tecum*, used to compel a witness to attend in court or before an examiner or referee, to give evidence and also bring with him certain documents in his possession speci-

fied in the *subpæna*; and (3) in Chancery practice, a writ called a "*subpæna*," directed to and requiring the defendant to appear and answer the matters charged against him in the bill.

§ 2. Under the old-English Chancery practice, every suit was commenced by a writ of *subpæna* requiring the defendant to appear; hence in the old books "*subpæna*" is equivalent to "suit in equity" or "bill of complaint." Under the more modern practice the *subpæna* was indorsed on the bill of complaint. Now every action is commenced by writ of summons.

§ 3. The *subpæna* to hear judgment was another kind used in Chancery practice; it was issued by the party setting down a cause for hearing and served on the opposite party. If the party served did not appear at the hearing, the court might make a decree against him. (Dan. Ch. Pr. 831 *et seq.*) As to the *subpæna* for costs, abolished by Rules of Court xlvii, 2, *see Id.* 1319.

SUBPENA AD TESTIFICANDUM.—*See* SUBPENA, § 1.

SUBPENA DUCES TECUM.—*See* SUBPENA, § 1.

SUBREPTION.—The obtaining a gift from the crown by concealing what is true.

SUBROGATION.—*LATIN: subrogare*, to choose in place of another. (Dirksen's *Man. Lat. s. v.*) As to the meaning of subrogation in French law, *see* Dalloz Dict. *s. v.*; Saint-Bonnet Dict. *s. v.*; Pothier de la Communauté, § 197.

In its general sense, subrogation is the substitution of one person or thing for another, so that the same rights and duties which attached to the original person or thing attach to the substituted one. Thus, if a person insures a ship which is lost by a collision caused by the negligence of another ship, he may recover the value of the ship from the underwriters, and then they are subrogated to his rights so as to be able to bring an action against the persons who caused the collision. (*See per* Mellish, L. J., North British, &c., Co. v. London, &c., Co., 5 Ch. D. 533, 534. *See, also*, INSURANCE, § 4.) Similarly, a surety who pays the debt of the principal, is subrogated to the rights of the creditor as against the principal.

SUBROGATION, (defined). 13 Am. Dec. 297 *n.* — (right of surety to). 1 Hill (N. Y.) 652; 6 Paige (N. Y.) 254.

SUBSCRIBE—SUBSCRIPTION.—To subscribe is, literally, to "write under," and is sometimes opposed to "sign," because a signature is not necessarily placed

at the end or bottom of an instrument. *See* SIGN; WILL.

SUBSCRIBE, (defined). 45 Ind. 213. — (in statute of wills). 24 Wend. (N. Y.) 327.

SUBSCRIBED, (equivalent to "signed"). 4 Col. T. 276, 282.

— (in statute of frauds). 6 N. Y. 13. **SUBSCRIBED BY THE COMPLAINANT**, (in a statute). 9 Gray (Mass.) 113.

SUBSCRIBER, (defined). 9 Dowl. & Ry. 278. — (equivalent to "member"). 1 Munf. (Va.) 592.

— (includes "stockholder"). 30 Ill. 413; 14 Wend. (N. Y.) 23.

— (for shares of a corporation, liability of). 8 Mass. 269; 10 *Id.* 384.

— (to a charitable fund, liability of). 6 Pick. (Mass.) 427.

— (to a ministerial fund, liability of). 5 Pick. (Mass.) 506.

— (in a statute). 2 Serg. & R. (Pa.) 457; 6 Barn. & C. 341; L. R. 6 Q. B. 297.

SUBSCRIBING WITNESS.—He who witnesses or attests the signature of a party to an instrument, and in testimony thereof subscribes his own name to the document. *See* ATTEST.

SUBSCRIBING WITNESS, (to a will). 4 Desaus. (S. C.) 305.

SUBSCRIPTION, (includes mark). 56 Ala. 516. — (distinguished from "attestation").

42 Wis. 66, 76. — (consideration for). 4 N. H. 533.

— (liability upon). 11 Mass. 117; 12 *Id.* 190; 14 *Id.* 172.

SUBSCRIPTION FOR STOCK, (in railroad company, is equivalent to a donation). 53 Miss 240, 245.

Subsequens matrimonium tollit peccatum præcedens (Reg. Jur. Civ.). A subsequent marriage removes a previous criminality, *i. e.* a legal marriage contracted subsequently to sexual intercourse between the parties thereto removes the previous legal blemish in the status of the offspring conceived of such intercourse, and born prior to the marriage. This maxim held good in Roman law, holds good in Scotch law, but is bad in English law.

SUBSEQUENT CONDITION.—*See* CONDITION, § 7.

SUBSEQUENT CREDITOR, (who is). 30 Ohio St. 11.

SUBSEQUENT MORTGAGEE, (in a statute). 43 Superior Ct. (N. Y.) 335, 339.

SUBSEQUENT PURCHASER, (defined). 33 Gratt. (Va.) 503.

— (who is not). 2 Binn. (Pa.) 503. — (in a statute). 15 Ill. 148; 30 Iowa

515; 4 Abb. (N. Y.) Fr. n. s. 221; 37 N. Y. 198.

SUBSERVIENT, (in tax act). 86 Ill. 336.

SUBSIDY.—

§ 1. In English law.—An aid, tax, or tribute granted to the crown for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods.

§ 2. In American law.—Pecuniary aid granted by the government to assist in carrying out any enterprise considered worthy of government aid, as being calculated to benefit the public.

SUBSIDY, (defined). 1 Ld. Raym. 319; 1 Bl. Com. 308; 2 Steph. Com. 556.

SUBSTANCE.—Essence; the material or essential part of a thing, as distinguished from *form* or *circumstance*.—*Burrill*.

SUBSTANCE, (in a will). Love. Wills 238.

SUBSTANCE, ALL MY, (in a will). 6 Serg. & R. (Pa.) 456.

SUBSTANCE, AND AS TO MY WORLDLY, (in a will). Cowp. 299.

SUBSTANCE AS FOLLOWS, IN, (in setting forth a libel). 1 Saund. 121, n. (a).

SUBSTANCE, AS TO MY WORLDLY, (in a will). 14 Serg. & R. (Pa.) 94.

SUBSTANCE, IN, (in indictment for perjury). 2 Murph. (N. C.) 320.

— (in a declaration in libel case). 3 Barn. & Ald. 503.

— (in plea in libel case). 4 Barn. & C. 473.

SUBSTANCE, OTHER, (in specification of patent). 3 Car. & P. 513; 1 Moo. & M. 283.

SUBSTANTIAL AND WORKMANLIKE MANNER, (construed). 58 Mo. 145.

SUBSTANTIAL DAMAGES.—A sum, assessed by way of damages, which is worth having; opposed to nominal damages, which are assessed to satisfy a bare legal right. See DAMAGES, § 4; EXEMPLARY DAMAGES.

SUBSTANTIAL HOUSEHOLDER, (in a statute). L. R. 1 Q. B. 72.

SUBSTANTIAL INHABITANTS, (in a statute). 2 Man. & Ry. 98.

SUBSTANTIAL RIGHT, (in act concerning appeals). 70 N. Y. 101.

SUBSTANTIALLY, (equivalent to "really" or "essentially"). 118 Mass. 441, 442.

SUBSTANTIATE, (means to establish by proof). 10 Wend. (N. Y.) 611.

SUBSTITUTE.—(1) One placed under another to transact business for him. In powers of attorney authority is generally given to the attorney to nominate and appoint a substitute. (2) In times of war a drafted person, i. e. a conscript, is some-

times allowed to furnish a mercenary substitute to go to the front in his stead.

SUBSTITUTE, (in military law). Burr. 1149.

SUBSTITUTED EXECUTOR.—

One appointed to act in the place of another executor upon the happening of a certain event, e. g. if the latter should refuse the office.

SUBSTITUTED SERVICE.—See SERVICE, § 11.

SUBSTITUTIO HÆREDIS.—In the Roman law, it was competent for a testator after instituting a *Hæres* (called the *Hæres Institutus*) to substitute another (called the *Hæres Substitutus*) in his place in a certain event; if the event upon which the substitution was to take effect was the refusal of the instituted heir to accept the inheritance at all, then the substitution was called *vulgaris* (or common); but if the event was the death of the infant (*pupillus*) after acceptance and before attaining his majority (of fourteen years if a male, and of twelve years if a female), then the substitution was called *pupillaris* (or for minors).—*Brown*.

SUBSTITUTION — SUBSTITUTIONAL — SUBSTITUTIONARY.—

Where a will contains a gift of property to a class of persons with a clause providing that on the death of a member of the class before the period of distribution his share is to go to his issue (if any), so as to substitute them for him, the gift to the issue is said to be substitutional or substitutionary. A bequest to such of the children of A. as shall be living at the testator's death, with a direction that the issue of such as shall have died shall take the shares which their parents would have taken, if living at the testator's death, is an example. Under such a gift the issue of children dead at the date of the will cannot take anything. Wats. Comp. Eq. 1260; 2 Jarm. Wills 771 *et seq.*; *In re Potter's Trust*, L. R. 8 Eq. 52.

SUBSTITUTION, (right of surety to). 6 Paige (N. Y.) 521; 6 Watts (Pa.) 221.

SUBTRACTION.—

§ 1. Subtraction is where a person refuses or neglects to perform a duty. The term is chiefly used in connection with services and tithes.

§ 2. Of services, &c.—In the law of real property, subtraction is where a person who owes any suit, duty, custom or other service to another, withdraws or neglects to perform it; the principal services which are the subject of subtraction are fealty, suit of court, rent, and customary

services. (See *SECTA.*) In the case of fealty, suit of court, and rent, the remedy is by distress; an action also lies for rent and for subtraction of customary services. (3 Steph. Com. 409; *Elt. Copyh.* 178. See *SERVICE*, § 6.) In practice, however, the wrong of subtraction is not of common occurrence.

§ 3. *Of tithes.*—In ecclesiastical law, subtraction is the injury of withholding tithes from the rector or vicar. For this injury, a suit lies in the Ecclesiastical Courts, unless the tithes only amount to £50 or under, or unless there is a dispute whether they are payable. But now almost all tithes have been commuted into rent-charges, for recovering which a special mode of proceeding by distress has been provided, so that suits of subtraction are now quite obsolete. 3 Steph. Com. 309. See *TITHES*.

§ 4. *Of conjugal rights.*—The act of a husband or wife, in living apart from the other without lawful cause. See *RESTITUTION OF CONJUGAL RIGHTS*.

SUBURBANI.—Husbandmen.

SUCCESSION—SUCCESSOR.—

§ 1. *Corporation sole.*—In the primary meaning of the word, succession is where property passes on the death of a corporation sole to his successor; “for as the heire doth inherit to the ancestor, so the successor doth succeed to the predecessor.” (Co. Litt. 8b, 250a.) Therefore, in a conveyance of land to a bishop, parson, or any other sole corporation, the limitation must be to him “and his successors;” otherwise he will take an estate for life only. (*Id.* 94b. See *FEE*, § 3; *HEIR*, § 9; *WORDS OF LIMITATION*.) In some cases a corporation sole can also take personal property by succession. 2 Bl. Com. 430. See *CHURCH WARDEN*; *CORPORATION*.

§ 2. *Succession by statute.*—There are also statutory modes of succession. Thus, where land is conveyed, to trustees for persons associated together for religious, educational, literary, scientific or artistic purposes, it passes to their successors in office without conveyance.

§ 3. *Succession of the crown.*—The succession of the English crown (the sovereign being a corporation sole) resembles the descent of land, except (1) that in the case of a sovereign dying and leaving no son but several daughters, the crown descends to the eldest alone; and (2) that it can only descend to Protestants. 1 Bl. Com. 191; 2 Steph. Com. 413. See *DEMISE*.

§ 4. *Succession Duty Act.*—A succession takes place, within the meaning of the English Succession Duty Act, 1853, where a person becomes beneficially entitled to or interested in property upon the death of another. The person so becoming entitled is called “the

successor,” and the person from whom he derives his title or interest is called “the predecessor.” Thus, if A. by deed settles property on B. for life, and after his death on C., then on B.’s death a succession takes place, C. being the successor and A. the predecessor. So, if A. dies intestate and entitled to land, a succession to his heir-at-law takes place.

§ 5. Where a person exercises a general power of appointment which he has become entitled to on the death of another person, he is deemed to be entitled to the property so appointed as a succession derived from the donor of the power. If, therefore, he exercises it by will, two successions take place on his death, one from the donor to the donee (appointor), and another from the appointor to the appointee. But where a person exercises a limited power which he has become entitled to on the death of another person, the appointee (and not the appointor) is deemed to take the property as a succession derived from the donor of the power. (Stat. 16 and 17 Vict. c. 51, § 4, and see § 33.) The object of the act being to impose a duty on all dispositions and devolutions of property not chargeable under the Legacy Duty Acts, the terms “succession,” “successor” and “predecessor” are in effect applicable only to successions arising from settlements *inter vivos* of real and personal property, and from descents or testamentary dispositions of real and leasehold estates. (See *LEASEHOLDS*.) Where a testator directs real estate to be sold, the proceeds are chargeable with legacy, and not with succession, duty. Stat. 45 Geo. III. c. 28. See *LEGACY DUTY*; *SUCCESSION DUTY*.

SUCCESSION DUTY is a tax imposed in England since the 19th May, 1853, on every “succession,” *i. e.* on the beneficial interest in property to which a person becomes entitled on the death of another, unless it is subject to legacy duty. As to the meaning of “successor” and “predecessor,” see *SUCCESSION*, § 4.

§ 2. *Rate of duty.*—The rates of succession duty are as follows: where the successor is the lineal issue or lineal ancestor of the predecessor, the duty is one per cent. on the value of the succession; if a brother or sister, or descendant of a brother or sister, three per cent.; if a brother or sister of the father or mother of the predecessor, or a descendant of such brother or sister, five per cent.; if a brother or sister of the grandfather or grandmother of the predecessor, or a descendant of such brother or sister, six per cent.; in any other case the duty is ten per cent. Stat. 16 and 17 Vict. c. 51; *Wms. Real Prop.* 288; *Thring’s Succ. Duty Act*; *Hanson’s Legacy and Succ. Duty Acts*. As to the recovery of succession duties, see the *Crown Suits Act*, 1865.

§ 3. *How assessed and paid.*—The value of a succession to real property is calculated as that of an annuity, equal to the annual value of the property, during the successor’s life, or for any less period during which he may be entitled, in accordance with the tables in the schedule to the act. The duty is paid by eight equal half-yearly instalments, commencing at the end of twelve months after the successor

first becomes entitled to the beneficial enjoyment of the property. (Section 21.) In the case of personal property, if the succession vests the whole beneficial interest immediately in the successor, the duty is chargeable upon the full amount or value of the succession, and is payable at once; if the succession consists of an annuity, the value of the annuity is calculated, and the duty is paid by four annual instalments. Sections 20, 32, incorporating §§ 8, 10-13 and 23 of the Legacy Duty Act, 1796.

§ 4. **Exemptions.**—Succession duty is not payable (1) on an estate under £100; (2) on any succession under £20; (3) on any succession which, if it were a legacy bequeathed by the predecessor to the successor, would be exempt from legacy duty (§ 18); (4) any succession on which probate duty has been paid under the Customs and Inland Revenue Act, 1881, is exempt from duty at one per cent. (Customs and Inland Revenue Act, 1881, § 41.) The only kind of property to which this exemption can apply seems to be leaseholds.

SUCCESSIVE, (defined). Hob. 313, 314, 315.

— (in a will). 10 Mod. 103.

SUCCESSIVE FEES, (distinguished from "concurrent" or "co-existing fees"). 15 East 196.

SUCCESSIVELY FOR SIX WEEKS, (in statute requiring advertisement). 1 Wend. (N. Y.) 90.

SUCCESSIVELY, THREE WEEKS, (in law respecting notice). 1 Mass. 247, 250.

SUCCESSOR.—One that follows in the place of another. The correlative of predecessor

SUCCESSOR, (in succession duty act). L. R. 5 H. L. 290.

SUCCESSOR IN INTEREST, (in statute as to survival of actions). 1 Civ. Pro (N. Y.) 129.

SUCCESSORS, (in deed to corporation, effect of). 34 Vt. 243.

— (in a bond). 2 Wheel. Am. C. L. 428.

— (in charter of corporation). 1 Whart. (Pa.) 410, 425.

— (in a will). 2 Pres. Est. 77.

SUCCESSORS AND ASSIGNS, (in a deed). 10 Allen (Mass.) 430.

SUCCESSORS IN TRUST, (in deed of assignment). 25 Minn. 509, 512.

SUCCESSORS, THEIR, (in a bond). 2 Bing. 32.

Succurritur minori; facilis est lapsus juventutis (Jenk. Cent. 47): A minor is to be assisted; a mistake of youth is easy.

SUCH, (is a word of reference). 1 Bos. & P. 254; 6 East 512; 9 H. L. Cas. 32, 54.

— (in articles of marriage settlement). 2 Burn. & Ald. 122.

— (in a plea). 2 Johns. (N. Y.) 363.

— (in a statute). 12 Wheat. (U. S.) 477; 2 Gray (Mass.) 68; 4 Vt. (N. J.) 205; Burr. 1370; 7 Mod. 130; Willes 603; Dwar. Stat. 705.

— (in a will). 1 Bing. 28, 32; 2 Id. 387; 1 Dru. & W. 66; 11 East 594; 5 Ves. 857; 4 Com. Dig. 155.

SUCH ACTION, PLAINT OR SUIT, (in a statute). 1 Barn. & Ad. 197.

SUCH DECEASED CHILD, (in statute concerning intestates). 3 Mass. 13.

SUCH HEIRS, (in a will). 100 Mass. 280.

SUCH ISSUE, (in a will). 2 Atk. 92.

SUCH ISSUE, ALL, (in a will). 1 Desaus. (S. C.) 132.

SUCH OF MY CHILDREN AS SHALL THEN BE LIVING, (does not include grandchild). 104 Mass. 193.

SUCH OTHER CLAUSES AS ARE USUAL IN SUCH CASES, (in an agreement to lease). 12 Ves. 179.

SUCH PERSON OR PERSONS, (in a statute). 9 Mod. 206.

SUCH PROCEEDINGS WERE HAD THEREUPON, (in pleading a judgment). 1 Saund. 331 n. (a).

SUCKEN.—The whole lands astricted to a mill, the tenants of which are bound to grind there.—*Bell Dict.*

SUDDEN AND UNEXPECTED DEATH, (what is). 19 Gratt. (Va.) 758, 784.

SUE.—

§ 1. To sue a person is to bring an action, suit, or other civil proceeding against him.

§ 2. As to the meaning of "sue" in the suing and laboring clause in a policy of insurance, *see* **SUING AND LABORING**.

SUE, (in statute, confined to actions). Wilberf. Stat. L. 125.

— (covenant not to, when equivalent to a release). 3 Bibb (Ky.) 247; 7 Har. & J. (Md.) 92; 15 Mass. 112; 17 Id. 623; 1 Cow. (N. Y.) 122; 7 Johns. (N. Y.) 207; 8 Id. 54; 4 Wend. (N. Y.) 610; 21 Id. 424; 7 Wheel. Am. C. L. 511; 1 Cro. 352; 12 Mod. 551; 8 T. R. 486.

— (covenant not to, when not a release). 17 Mass. 582; 8 Pick. (Mass.) 229; 3 Gr. (N. J.) 423; 1 Halst. (N. J.) 429; 19 Johns. (N. Y.) 129; 6 Wend. (N. Y.) 471; 1 Watts (Pa.) 500; 6 Munf. (Va.) 6; 2 Chit. 541; Show. 46, 331; 6 Taunt. 289.

SUFFER, (distinguished from "procure"). 2 Biss. (U. S.) 423.

SUFFER AN ACT TO BE DONE, (construed). 19 Conn. 505.

SUFFER ANY ACT, (in a settlement). L. R. 3 Eq. 759.

SUFFER HIS LESSEE TO ENJOY, (in a lease). Dyer 255 a.

SUFFERANCE.—*See* **TENANT AT SUFFERANCE**.

SUFFERANCE, TENANCY BY, (what is). 4 Johns. (N. Y.) 150.

SUFFERANCE, TENANT AT, (defined). 6 Wheel. Am. C. L. 389; 23 Wend. (N. Y.) 616.

SUFFERANCE WHARVES.—Wharves on which goods may be landed before any duty is paid. They are appointed for the purpose by the commissioners of the customs, 16 and 17 Vict. c. 107, § 13; 2 Steph. Com. (7 edit.) 500 n.

SUFFERENTIA PACIS.—A grant or surerance of peace or truce.—*Rot. Claus.* 16 Edw. III.

SUFFERING, (distinguished from "procuring"). 2 Ben. (U. S.), 196.

SUFFERING A RECOVERY.—A recovery was effected by the party wishing to convey the land *suffering* a fictitious action to be brought against him by the party to whom the land was to be conveyed (the demandant), and allowing the demandant to recover a judgment against him for the land in question. The vendor, or conveying party, in thus assisting or permitting the demandant so to recover a judgment against him, was thence technically said to "suffer a recovery."—*Brown*.

SUFFERING AN ACT TO BE DONE, (what is). 58 Ill. 221, 225.

SUFFERING GAMING, (in licensing act). L. R. 1 Q. B. D. 84, 89.

SUFFICIENT, (in a covenant). 4 Barn. & C. 741, 749.

— (in act relating to jails). 83 Ill. 341.

SUFFICIENT ABILITY, (to support child). 128 Mass. 137, 139.

SUFFICIENT BARRIER, (defined). 112 Mass. 489, 491.

SUFFICIENT CONSIDERATION, (what is). Cro. Eliz. 67.

SUFFICIENT DISTRESS, (what is). Com. L. & T. 508.

— (in a statute). L. R. 3 Ex. 56.

SUFFICIENT EVIDENCE, (in statute means "*prima facie*," or more). Wilberf. Stat. L. 139, 140.

SUFFICIENT FORM, (in a statute). 105 Mass. 179.

SUFFICIENTLY CHARGED, (construed). Cowp. 682.

SUFFRAGAN.—Bishops who in former times were appointed to supply the place of others during their absence on embassies or other business were so termed, because they were said to help or assist (*suffragari*) the bishop when incapacitated by his other duties. They were consecrated at other bishops were, and were anciently called "*choepiscopi*," or "bishops of the county," in contradistinction to the regular bishops of the city or see. The practice of creating *suffragan* bishops after having long been discontinued was recently revived; and such bishops are now permanently "*assistant*" to the bishops. See BISHOP, § 2.

SUFFRAGE.—Vote; elective franchise; voice given in a controverted point; aid, assistance.

SUFFRAGIUM.—In the Roman law, a vote; also, the right of voting in the assemblies of the people.

SUGGESTIO FALSI.—An active misrepresentation, as opposed to a *suppressio veri*, or passive misrepresentation. See MISREPRESENTATION.

SUGGESTION.—In practice, facts may in certain cases be brought before the court by entering a suggestion (*i. e.* an allegation) of them on the roll or record of proceedings in an action. Under the practice of the common law courts, the roll is made up, and the suggestion entered thereon, and a copy of it delivered to the other side. Changes of the parties to an action can be entered on the roll by suggestion, (*see* Arch. 926, n. (h), 1245, notes,) but the new English practice, as well as that prevailing in the code States, as to revivor (*q. v.*), seems to have abolished this mode of proceeding.

SUI HÆREDES.—One's own heirs; proper heirs. Inst. 2, 19, 2.

SUI JURIS.—

§ 1. **Roman law.**—In Roman law, persons were divided into two classes, according as they were *sui* or *alieni juris*. Persons subject to the *potestas* of a father, or the *manus* of a husband, or the *mancipium* of a master, were said to be *alieni juris*; the class, therefore, included all persons having a father or other ascendant living (unless they had been emancipated or otherwise freed from the *patria potestas*); all married women who had been married with certain formalities, and all slaves. All other persons were *sui juris*, so that a child of a few years old, if he had no father or other ascendant living, and had not been adopted by any one, was *sui juris*, although he was under disability. Hunt. Rom. L. 48.

§ 2. **English law.**—In English law, the term "*sui juris*" (though taken from the Roman law) is used in quite a different sense. A person is said to be *sui juris* if he is not subject to any general disability. Therefore, infants, married women, lunatics, convicts and a few other persons, are not *sui juris*, because they cannot enter into contracts or dispose of their property with the same freedom as ordinary persons. See COVERTURE; CURATOR; DISABILITY; GUARDIAN; INFANT; NEXT FRIEND.

SUICIDE is where a person kills himself. Deliberate suicide by a sane person is a felony at common law, formerly punishable by forfeiture of the offender's goods and chattels to the crown, and by an ignominious burial in the highway with a stake driven through his body, and without Christian rites of sepulture; but now the only consequences, in England, are burial in a church-yard or other burying ground between nine and twelve at night without Christian rites. (4 Steph. Com. 62; Stats. 4 Geo. IV. c. 52; 33 and 34 Vict. c. 28.) And in practice very slight evidence is sufficient to induce a coroner's jury to return a verdict of temporary insanity, which

makes the suicide no crime. (*See* INQUEST; FELO DE SE.) No such consequences follow the commission of suicide in America; but in some jurisdictions attempts to commit suicide are punishable.

SUICIDE, (defined). 34 Mich. 41; 4 Hill (N. Y.) 73; 8 N. Y. 299.

— (synonymous with dying by one's own hand). 54 Me. 224.

— (when avoids a policy of insurance). 4 Allen (Mass.) 96.

SUICIDE, SHOULD COMMIT, (in a policy of insurance). 3 Com. B. 437, 458.

SUING AND LABORING CLAUSE is a clause in an English policy of marine insurance, generally in the following form: "In case of any loss or misfortune, it shall be lawful to the assured, their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the" property insured, "without prejudice to this insurance; to the charges whereof we the assurers will contribute." (Maud. & P. Mer. Sh. 335.) The object of the clause is to encourage the assured to exert themselves in preserving the property from loss. Booth v. Gair, 15 Com. 3. N. s. 291; Lohre v. Aitchison, 2 Q. B. D. 501; *Id.* 558; 4 App. Cas. 755.

SUING OUT A WRIT, (what is). 14 Wend. N. Y.) 654.

SUIT is a generic term, and denotes any legal proceeding of a civil kind brought by one person against another. (Co Litt. 291a.) The term is, however, used in opposition to "action," "suit" being the proper word for a litigation in Chancery, and "action" for a contest in a court of law. A proceeding for nullity or dissolution of marriage, &c., in the English Probate, Divorce and Admiralty Division of the High Court is also called a "suit."

§ 2. In the technical sense of the word, a bond or recognizance given to a public officer as security is said to be "put in suit" when proceedings are taken to enforce it. Thus, a bond which has been entered into as security for costs is put in suit by leave of the court, when the occasion arises, by the person whose costs were intended to be secured. Dan. Ch. Pr. 36, 1605.

As to suit in the sense of a service, *see* SECTA; SUIT OF COURT.

SUIT, (defined). 2 Pet. (U. S.) 449, 464; 6 Wheat. (U. S.) 407; 15 Bankr. Reg. 23; 32 Ga. 435, 437.

SUIT, (what is). 12 Pet. (U. S.) 645; 14 *Id.* 563; 1 Harr. (N. J.) 496; 1 Sandf. (N. Y.) 690.

— (what is not). 1 Hughes (U. S.) 270.

— (distinguished from "action"). 6

Mod. 34.

— (synonymous with "action"). 38 Vt.

171.

— (synonymous with "case"). 2 Gr.

(N. J.) 443.

— (a proceeding by *mandamus* is). 50

Ill. 503.

— (a writ of error is not). 1 Barb. (N.

Y.) 11.

— (in an insurance policy). 35 Conn.

312.

— (in a statute). 8 Serg. & R. (Pa.) 58.

SUIT AT LAW, (what is). 23 Pick. (Mass.) 10.

SUIT DEFENDING, (construed). 1 Moo. P. C.

395.

SUIT OF COURT is a service theoretically due from every tenant of land forming part of, or held of, a manor, and consists in the duty of attending the courts held by the lord. Free tenants or tenants of freehold land are bound (either personally or by attorney) to attend their lord's Court Baron (*q. v.*), while copyhold tenants are bound to attend personally at the Customary Court. These courts are still held in some manors. (Elt. Copyh. 178; Wms. Seis. 15, 36.) In addition to the suit mentioned in the text (suit service), Reeves describes a kind of suit called "suit real," due in respect of residence to a leet or tourn. 1 Hist. 265; Scriv. Copyh. 684. *See* SECTA; SERVICE; SUBTRACTION.

SUIT OF THE KING'S PEACE.—The pursuing a man for breach of the king's peace by treasons, insurrections, or trespasses.—*Cowell.*

SUIT OR CASE, (construed). 58 Ga. 147.

SUIT OR OTHER PROCEEDING, (in judicature act). 5 Ch. D. 901.

SUIT OR PROSECUTION, (in a statute). 12

Allen (Mass.) 217.

SUITABLE BRIDGES, (defined). 113 Mass. 161.

SUITABLE FORM, (in a statute). 105 Mass.

179.

SUITABLE PERSON, (means competent person).

1 Bradf. (N. Y.) 200, 207.

SUITER, or SUITOR.—One that sues; a petitioner; a suppliant; a wooer.

SUITOR, (privilege of). 11 Mass. 11; South. (N. J.) 366; 4 Serg. & R. (Pa.) 149; 4 Yeates (Pa.) 123.

SUITORS, (includes both plaintiffs and defendants). 1 U. S. L. J. 389.

SUITORS' DEPOSIT ACCOUNT.—

Formerly suitors in the English Court of Chancery derived no income from their cash paid into court, unless it was invested at their request and risk; now, however, it is provided by the Court of Chancery (Funds) Act, 1872, that all money paid into court, and not required by the suitor to be invested, shall be placed on deposit and shall bear interest at two per cent. per annum for the benefit of the suitor entitled to it. The

sum required for the payment of this interest is produced by placing all money in court not required for meeting current demands in the hands of the commissioners for the reduction of the national debt, who invest it in government securities. This arrangement is called the "suitsors' deposit account." See the Chancery Funds Consolidated Rules, 1874; Report of the Chancery Funds Commissioners (1864) lvii.

SUITORS' FEE FUND was a fund arising partly from the fees of the English Court of Chancery, and partly from the surplus income of the suitsors' fund (*q. v.*) Out of it the salaries and other expenses of the Court of Chancery were paid. By the Courts of Justice (Salaries and Funds) Act, 1866, the suitsors' fee fund was transferred to the commissioners for the reduction of the national debt, and the salaries and expenses formerly paid out of it were charged on the consolidated fund. Rep. Chanc. Fund Comm. 1864.

SUITORS' FUND was a fund belonging to the English Court of Chancery and consisting of two parts. Fund A. consisted of government stocks resulting from the investment of so much of the money in court belonging to the suitsors as was not required for current purposes. Part of the income arising from these investments was employed in paying certain expenses of the court, and the balance was invested in government stocks, which formed fund B. Subsequently the surplus income of both funds was annually added to the suitsors' fee fund (*q. v.*) By the Courts of Justice, &c., Act, 1869, the suitsors' fund was transferred to the commissioners for the reduction of the national debt, and the consolidated fund was made liable for the due payment of the money which belonged to the suitsors and had been invested as above stated. Chanc. Funds Comm. Rep. 1864. See PAYMASTER-GENERAL.

§ 2. The official solicitor to the Court of Chancery (*q. v.*) was originally called the "solicitor to the suitsors' fund," by reason of his duties in connection with that fund. Legal Dep. Comm. Second Rep. (1874), 40.

SUITS, (in section nine of the judiciary act). 1 Binn. (Pa.) 144.

SUITS AT COMMON LAW, (defined). 1 Baldw. (U. S.) 556.

SUITS, CONTROVERSIES AND DEMANDS, (submission to arbitration of all). Cro. Jac. 447.

SUITS SHALL CEASE, (an award that all). 6 Mod. 36.

SUIT-SILVER, OR SUTER-SILVER.—A small rent or sum of money paid in some manors to excuse the freeholders' appearance at the courts of their lord.—*Cowell*.

SULCUS.—A small brook or stream of water.—*Cowell*.

SULE HELMYSSAN.—Plough-arms.—*Anc. Inst. Eng.*

SULLERY.—A plough-land. 1 Inst. 5.

SUM.—A summary or abstract; a compendium; a collection.

SUM, (defined). 6 Otto (U. S.) 368.

SUM IN CONTROVERSY, (synonymous with "sum demanded"). 9 Serg. & R. (Pa.) 300.

SUM IN DISPUTE, (in a statute). L. R. 2 A. & E. 57.

SUM IN GROSS, (in act relating to trusts). 16 Wend. (N. Y.) 61, 262.

SUMAGE.—Toll for carriage on horseback. —*Cowell*.

Summa ratio [lex] est, quæ pro religione facit (5 Co. 14): The highest law is that which supports religion.

SUMMARY.—

§ 1. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings, *i. e.* in comparison with the proceedings which alone would have been applicable, either in the same or analogous cases, if summary proceedings had not been available. Summary proceedings are sometimes concurrent with regular proceedings, *i. e.* either may be adopted. In some of the States, the phrase is used to designate proceedings taken by a landlord to dispossess a tenant for non-payment of rent, or for holding over the term.

§ 2. In English law, petitions, special cases, motions, and summonses, not being interlocutory proceedings in an action or suit, are instances (chiefly occurring in the Chancery Division, under the statutory jurisdiction of the High Court) of summary proceedings in civil cases, as opposed to suits or actions. Blackstone remarks that the common law is a stranger to summary proceedings, except in the case of contempt of court. (4 Bl. Com. 280.) For examples, see PETITION, § 4; SUMMONS, § 6. There are also summary modes of putting an end to an action, without carrying it on to trial, *e. g.* by obtaining judgment where the defendant has no defense, (see JUDGMENT, § 9,) or by interpleader proceedings.

§ 3. **Criminal.**—In criminal cases, summary proceedings are those which may be had and concluded before a magistrate or justices of the peace, as opposed to regular proceedings by indictment or information and trial by a jury. The English Summary Jurisdiction Act, 1879, has much extended the power of magistrates to dispose of cases summarily, provided that the accused, if an adult, consents, and that the offense is one of minor gravity, *e. g.* larceny. Paley Sum. Convic. 15; 4 Steph. Com. 329; Summary Jurisdiction

Act, 1879, and the Rules and Forms, 1880, issued thereunder. See COMPLAINT; INFORMATION, § 15; JUSTICE OF THE PEACE; QUARTER SESSIONS.

As to summary process, see PROCESS, § 5.

As to summary proceedings in ecclesiastical matters, see CAUSE, § 3.

SUMMER-HUS SILVER.—A payment to the lords of the wood on the Wealds of Kent, who used to visit those places in summer, when their under-tenants were bound to prepare little summer-houses for their reception, or else pay a composition in money.—*Customale de Newington juxta Sittingburn, M. S.; Cowell.*

SUMMING-UP, on the trial of an action by a jury, is a recapitulation of the evidence adduced, in order to draw the attention of the jury to the salient points. The counsel for each party has the right of summing up his evidence, if he has adduced any, and the judge finally sums up the whole in his charge to the jury. Sm. Ac. 157. See REPLY; RIGHT TO BEGIN; TRIAL.

* (1) *High court.*—In the High Court of Justice, a summons is a mode of making an application to a judge or his deputy in chambers (*q. v.*) Summons are, therefore, only used on applications which are either of subsidiary importance or can be conveniently disposed of in chambers, such as applications for enlarging the time to take certain steps, for discovery and production of documents, for appointing examiners and receivers (see generally as to summonses, Rules of Court, liv. (especially the rules of April, 1880); Chit. Gen. Pr. 1598 *et seq.*; Dan. Ch. Pr. 1050), for leave to sign judgment under Ord. xiv., for the committal of a judgment debtor, &c. In simple cases, the solicitors of the parties attend on their behalf; in difficult or important cases, counsel are instructed. Some of the Chancery judges do not hear counsel in chambers.

(2) *Queen's Bench.*—In the Queen's Bench Division some summonses must be heard in the first instance by a master, and others by a judge. An appeal lies from a master to a judge in chambers, and from the judge to the Divisional Court. Rules of Court, liv. 6, (May, 1880,) lvii. A.

(3) *Chancery Division.*—In the Chancery Division every summons is heard in the first instance before the chief or junior clerk, but either party, if dissatisfied with the decision, is entitled to have the summons heard by the judge in chambers. This is called "adjourning the summons to the judge." The judge may also adjourn the summons to be argued in court, or, if he refuses to do so, the dissatisfied party may either move before the judge in court to rescind the order made in chambers, or may appeal to the Court of Appeal.

Summons in the Chancery Division are of two kinds—

SUMMIT OF A MOUNTAIN, (made the division line between countries). 3 Watts & S. (Pa.), 579.

SUMMONEAS.—A writ-judicial of great diversity, according to the divers cases wherein it was used. Obsolete.

SUMMONED TO ANSWER, (in a declaration). 2 Chit. 638.

SUMMONERS.—Petty officers, who cite and warn persons to appear in any court. Fleia l. ix.

Summationes aut citationes nullæ liceant fieri intra palatium regis (3 Inst. 141): Let no summonses or citations be served within the king's palace. See Att'y-Gen. v. Dakin, 37 L. J. Ex. 150; 39 Id. 113.

SUMMONITORES SCACCARII.—Officers who assisted in collecting the revenues by citing the defaulters therein into the Court of Exchequer.

SUMMONS.—

§ 1. *In English law.*—A summons is a document issued from the office of a court of justice, calling upon the person to whom it is directed to attend before a judge or officer of the court for a certain purpose. See MOTION; PETITION; WRIT OF SUMMONS.*

(4) Summons in pending actions and matters. These are of infinite variety, as already indicated. (*Supra* (1).) An important kind is the summons to proceed. When a judgment or order has been made in court directing accounts, inquiries, or other steps to be taken in chambers, the matter is brought before the chief clerk by a summons "to proceed under the judgment (or order), dated the," &c. Appointments before the chief and junior clerks are obtained on this summons, from time to time, until the matter is disposed of, and the certificate made. See Dan. Ch. Pr. 1085.

(5) An *originating* summons is so called because it is the first step taken in the matter, *i. e.* the matter is commenced by the issue of a summons in the same way as an action is commenced by the issue of a writ, and the persons served (the defendants) enter an appearance in the same way as defendants to an action. The most important instance of this kind of summons formerly was the administration summons under 15 and 16 Vict. c. 86, § 45, on which an order for the administration of the *personal* estate of a deceased person might be made on the application of a creditor, legatee or next of kin without the institution of a regular action or suit. (See Hunt. Eq. 240; Dan. Ch. Pr. 1051, 1071.) Since the Judicature Acts, however, it has become usual in simple cases to obtain a judgment on a writ of summons, without pleadings, and hence administration summonses are not of such frequent occurrence as formerly. Maintenance orders are sometimes obtained on originating summonses.

(6) *County court.*—In a county court action as soon as the plaint (*q. v.*) has been entered, a summons requiring the defendant to appear and answer the plaintiff's claim on a certain day, is

§ 2. In New York and many other code States, the summons is the process used in commencing a civil action in a court of record, whether it be an action at law or a suit of an equitable nature. Properly speaking, such a summons is not "process" but is rather in the nature of a mere notice informing the defendant that an action has been commenced against him, and that he is required to answer the complaint of the plaintiff therein within a specified time. In some cases a copy of the complaint is annexed to and served with the summons; if this is not done the summons notifies the defendant where the complaint will be filed.

§ 3. In police court practice, a summons is the ordinary way of compelling the appearance of a person against whom a complaint, information or other proceeding has been brought, in cases where the justice does not desire to issue a warrant in the first instance. See WARRANT.

SUMMONS, (in a statute). 3 Mont. T. 44.

Summum jus, summa injuria. **Summa lex, summa crux** (Hob. 125): Extreme law is extreme injury. Strict law is strict punishment. In other words, the strictest exaction of one's legal rights is the supremest infliction of injury upon others—a maxim which had some application perhaps before the fusion of law and equity, but which has none since then. Probably, the maxim was one of the reasons which assisted in the original development of equity as a substantive separate jurisdiction.

SUMNER, or SOMPNOUR.—One who cites or summonses.—*Cowell.*

SUMPTUARY LAWS.—Those in restraint of luxury, excess in apparel, &c.; they are all repealed by 1 Jac. I. c. 25. 3 Hallam Mid. Ages c. 9, pt. 2, p. 343.

SUMS OF MONEY, (in a will). L. R. 8 Ch. 401; 5 Ves. 419.

SUNDAY.—The first day of the week. The principal English statutes directed against

profanation of the Lord's day by trading, unlawful pastimes, &c., are 27 Hen. VI. c. 5; 1 Car. I. c. 1; 29 Car. II. c. 7; 21 Geo. III. c. 49, amended by 38 and 39 Vict. c. 80 (as to public entertainments), and the various Factory and Workshop Regulation Acts, and the Licensing Acts (*q. v.*) (4 Steph. Com. 212.) As to Sunday trains on railways, see 7 and 8 Vict. c. 85, § 10. As to Jews working in workshops, see Stat. 34 Vict. c. 19. The Stat. 29 Car. II. c. 7, forbids the exercise by any person of his ordinary calling on the Lord's day under a penalty of five shillings; it also makes the service or execution of any writ, process, judgment, &c., on the Lord's day (except in the case of treason, felony or breach of the peace,) absolutely void, and makes the person offending liable to an action for damages. No proceedings can be taken under this act except with the consent of the chief officer of police or magistrate of the district. (Stat. 34 and 35 Vict. c. 87; Expiring Laws Continuance Acts, 1880, 1881.) Subject to the provisions of these statutes it seems that any act or thing done on Sunday is legal and valid. (See Benj. Sales 442; citing *Drury v. Defontaine*, 1 Taunt. 131.) In America each State has its own Sunday laws, more or less similar to the English acts.

SUNDAY, (comprises the solar day only). 2 Conn. 541.

— (synonymous with "Sabbath" and "the Lord's day"). 6 Gill. & J. (Md.) 268.

— (promissory note made on). 10 Mass. 312.

— (promissory note falling due on). 2 Conn. 69.

— (lien of attachment expiring on). 15 Mass. 225.

— (notice good, dated on). 1 Gr. (N. J.) Ch. 106.

— (not computed one of four days for bail). 2 Str. 782.

— (judgment on). Penn. (N. J.) 900.

— (day of performance of a contract falling upon). 20 Wend. (N. Y.) 205.

— (verdict rendered on). South. (N. J.) 158; 3 Watts (Pa.) 56.

— (when is not included in time allowed by a statute). 4 Pick. (Mass.) 354.

— (last day to plead falling upon). 5 Wend. (N. Y.) 84; 3 T. R. 642; 4 Id. 557.

SUNDRIES, (in declaration in replevin). 7 Wheel. Am. C. L. 577.

SUNRISE.—In *Tutton v. Darke*, 5 Hurlst. & N. 647, the question will be found raised whether the time of sunrise is to be reckoned from the first appearance of the beams of the sun above the

issued and served on the defendant; attached to it are the particulars of demand, if any, and indorsed on it are various notices for the guidance of the defendant. (See County Court Forms, 1875, No. 11; Poll. C. C. Pr. 84 *et seq.*) Where it cannot be served in time, successive summonses may be issued. (Poll. 92; C. C. Rules, 1875, viii. 6.) In certain cases the plaintiff may, upon filing an affidavit that the debt sued for is due to him, obtain a summons for judgment by default,

which informs the defendant that unless within sixteen days after service he gives notice of his intention to defend the action, the plaintiff may sign judgment. Poll. 93; County Courts Act, 1875, § 1.

(7) The attendance of witnesses in county court actions is enforced by summons, with or without a clause requiring the production of books, &c., in their possession. Poll. C. C. Pr. 117.

horizon, or from the time when the entire sun has emerged.

SUPER.—Upon; above; over.

SUPER ALTUM MARE.—Upon the high sea.

Super fidem chartarum, mortuis testibus, erit ad patriam de necessitate recurrendum (Co. Litt. 6): The truth of charters is necessarily to be referred to a jury, when the witnesses are dead.

SUPER PRÆROGATIVA REGIS.—A writ which formerly lay against the king's tenant's widow for marrying without the royal license.—*F. N. B.* 174.

SUPER STATUTO, 1 EDW. III. c. 12.—A writ that lay against the king's tenant holding in chief, who aliened the king's land without his license.

SUPER STATUTO DE ARTICULIS CLERI.—A writ which lay against a sheriff or other officer who distrained in the king's highway, or on lands anciently belonging to the church.

SUPER STATUTO FACTO POUR SENESCHAL ET MARSHAL DE ROY, &c.—A writ which lay against a steward or marshal for holding plea in his court, or for trespass or contracts not made or arising within the king's household.

SUPER STATUTO VERSUS SERVANTES ET LABORATORES.—A writ which lay against him who kept any servants who had left the service of another contrary to law.

SUPER VISUM CORPORIS.—Upon view of the corpse. A coroner's inquest must be held *super visum corporis*.

SUPERCARGO.—An officer or agent in a ship, whose business is to manage the trade. A person employed by commercial companies or private merchants, to take charge of the cargoes exported, to sell them abroad to the best advantage, and to purchase proper commodities to relade the ship homewards. He goes out and returns home with the ship, thus differing from factors, who have a fixed residence.

SUPERFIOLARIUS.—In the civil law, a builder upon another's land under a contract.

SUPERFICIES.—The alienation by the owner of the surface of the soil of all rights necessary for building on the surface, a yearly rent being generally reserved; also a building or erection. *Sand. Inst.* (5 edit.) 133.

SUPERFINE FLOUR, (in a contract for the sale of). *9 Watts (Pa.)* 121.

Superflua non nocent (Jenk. Cent. 184): Superfluities hurt not.

SUPERFLUOUS LANDS in English law, are lands acquired by a railway company under its statutory powers, and not required for the purposes of its undertaking. The company is bound within a certain time to sell such lands, and if it does not, they vest in and become the property of the owners of the adjoining lands. *Lands Clauses C. Act, 1845, § 127 et seq.*; *Hodg. Railw. 380*; *In re Metr Dist. Railway and Cosh, 13 Ch. D. 607.* See **PRE-EMPTION**.

SUPERFLUOUS LANDS, (in lands clauses consolidation act). *L. R. 4 H. L. 610*; *7 Id.* 283. — (in railway act). *L. R. 8 Q. B. 26.*

SUPERFŒTATION.—The conception of a second embryo during the gestation of one already conceived so that the two children may be born at the same or at different times. Its bearing in legal medicine is on the question of legitimacy.

Should the doctrine of superfœtation ever be pleaded in medico-legal cases, the laws of legitimacy must be the guide, both as to premature and protracted births. The latest born should fall within the legal term, or be excluded from the privileges attendant on it; and this is more particularly necessary from the obscurity that invests the subject.

This phenomenon is generally thought by the faculty to be impossible. It has been suggested that one conception may follow another within a short period, and that twins may be the result of two distinct conceptions, and this has been denominated *super-conception*; but it is hardly probable, say the opponents of this doctrine, that a second conception should take place when a prior conception has already arrived at the second month. It is not uncommon in the case of twins that one should be born prematurely, and the other go on to its full period. See further on this subject, *Beck Med. Jur.* 158; *Tayl. Med. Jur. c. 50*; *Guy For. Med.* 87.

SUPERINSTITUTION.—Where a church is full by institution, and a second institution is granted to the same church, this is a superinstitution, and necessarily raises the question who is entitled to the benefice. It is said that the party who obtains a superinstitution may try his title by ejectment, but that in consequence of its inconveniences this method is discouraged, and the more usual remedy of a *quære impedit* adopted. *Phillim. Ecc. L.* 476.

SUPERINTEND, (the building of a house). *2 Pick. (Mass.)* 352.

SUPERINTENDENT, (in a statute). 86 Ill. 325.

SUPERIOR.—The grantor of a feudal right to be held of himself. *See Bell Dict.*

SUPERIOR AND VASSAL.—In the Scotch law, a feudal relation corresponding with the English *lord and tenant*.

SUPERIOR COURTS.—

§ 1. **In English law.**—The Courts of Chancery, Queen's Bench, Common Pleas, and Exchequer, at Westminster, were so called. *See* these courts treated of under the proper titles; *See, also*, HIGH COURT OF JUSTICE; SUPREME COURT OF JUDICATURE.

§ 2. **In American law.**—Courts of original (and in some cases appellate) jurisdiction, which are intermediate between the "inferior courts" (*q. v.*) and the courts of last resort.

SUPERIOR COURTS, (what are). 1 Mass. 387.
— (in a statute). L. R. 5 Q. B. 418.

SUPERIORITY.—In the Scotch law, the *dominium directum* of lands, without the profit. —*Bell Dict.*

SUPER-JURARE.—A term anciently used when a criminal endeavored to excuse himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious that he was convicted on the oaths of many more witnesses. —*Wharton*.

SUPERONERATIONE PASTURÆ.

—A judicial writ that lay against him who was impleaded in the county court for the surcharge of a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the superior courts. *Obsolete*.

SUPERPLUSAGIUM.—Overplus; surplus; residue or balance. —*Spel. Gloss.*

SUPERSEDE.—To stay, stop, interfere with, or annul; *e. g.* to supersede the proceedings in outlawry, or in bankruptcy, or in lunacy, &c.

SUPERSEDE, (in a military sense, defined). 1 Pick. (Mass.) 261.

SUPERSEDEAS.—

§ 1. A writ which stays or puts an end to a proceeding. Thus, if a *certiorari* (*q. v.*) has been wrongly issued, and has been returned, the court will grant a *supersedeas*. (Tidd Pr. 403.) So, where a person has been irregularly found a lunatic, or has been found a lunatic and afterwards recovers, the inquisition may be superseded or set aside on petition by him to the lord chancellor. Pope Lun. 190.

§ 2. **Arrest.**—Formerly the writ of *supersedeas* was of great importance in the law of bailable proceedings, it being the means by which a defendant who had been arrested on mesne process obtained his discharge. A prisoner entitled to the writ was said to be supersedeable. Lee Dict. 1301.

§ 3. **Bankruptcy.**—Under the old English practice in bankruptcy, when the proceedings were commenced by commission, the bankruptcy was put an end to *ab initio* by superseding the commission, which was done by writ of *supersedeas*. (8 Ves. 533; 10 *Id.* 104.) The same effect is now produced by annulling the adjudication. *See ANNUL*.

SUPERSEDEAS, (*certiorari* operates as). South. (N. J.) 513.

SUPERSEDED, (defined). 1 Pick. (Mass.) 261.
SUPERSTITIOUS USE, (what is not). 1 Watts (Pa.) 224.

SUPERSTITIOUS USES AND TRUSTS, or dispositions of real or personal estate for propagating religious rites not tolerated by the law of England, are void; such is a bequest for masses for the soul of the testator. (Tud. Char. Trusts 18; Wats. Comp. Eq. 39; West v. Shuttleworth, 2 Myl. & K. 684.) The rule apparently does not apply to Ireland.

§ 2. Property given by will to superstitious uses goes to the representatives of the testator, (his heir, next of kin, residuary legatee, &c., according to circumstances,) unless the uses are charitable as well as superstitious, in which case it goes to the crown to be applied to valid charitable objects. Tud. Char. Trusts 29 *et seq.*; and see Stat. 23 and 24 Vict. c. 134, as to gifts to Roman Catholic charities. *See CHARITY*.

SUPERVISOR.—A surveyor or overseer; a highway officer. Also, in some States, the chief officer of a town; one of a board of county officers. *See BOARD OF SUPERVISORS*.

SUPPLEMENTAL.—Something added to supply defects in the thing to which it is added, or in aid of which it is made.

SUPPLEMENTAL AFFIDAVIT.

—An affidavit made in addition to a previous one, in order to supply some deficiency in it.

SUPPLEMENTAL ANSWER.—

One which was filed in Chancery for the purpose of correcting, adding to, and explaining an answer already filed. Sm. Ch. Pr. 334.

SUPPLEMENTAL BILL.—In a suit in Chancery, it frequently happens

that new matter arises or is discovered after the filing of the original bill in the suit, or that some of the parties acquire a new interest, or that new parties acquire an interest in the matter in question; all which matters have to be brought to the knowledge of the court upon the proceedings. Now it occasionally happens that some of these objects might be accomplished by amending the bill; but after the parties are at issue, and witnesses have been examined in the suit, the bill cannot usually be amended, and therefore the defect is in such a case supplied by means of what is termed a supplemental bill. (Gray Ch. Pr. 86.) However, under the modern English practice, and that adopted in the code States, the necessity for such a bill has now ceased, and the old effect thereof may now in general be produced by amendments and an order of revivor; but supplemental complaints and petitions are still occasionally resorted to in code practice.

SUPPLEMENTAL BILL, (is but a continuation of the original suit). 5 Paige (N. Y.) 530.

SUPPLEMENTAL BILL, BILL IN THE NATURE OF A.—See **BILL IN THE NATURE, &c.**

SUPPLEMENTAL CLAIM.—A further claim which was filed when further relief was sought after the bringing of a claim. Sm. Ch. Pr. 655.

SUPPLETORY OATH.—In the modern practice of the civil law, a less number than two witnesses falls short of *plena probatio* (full proof); the testimony of one witness is *semi-plena probatio* only, on which no sentence can be founded; in order to supply the other half of proof, the party himself (plaintiff or defendant) is examined on his own behalf, and the oath administered to him for that purpose is called the "suppletory oath," because it supplies the necessary quantum of proof on which to found the sentence.

SUPPLIANT.—The actor in, or party preferring, a petition of right. See **PETITION OF RIGHT.**

This writ has been of late years seldom used, for when application has been made to the superior courts, they have usually taken the recognizances there, under the 21 Jac. I. c. 8.

SUPPLICATIO.—In the civil law, a pleading corresponding to the rejoinder of the common law.

SUPPLICAVIT.—In England, when a justice of the peace refuses to compel a person

to give security to keep the peace, the person exhibiting the articles (*i. e.* the person making complaint) may apply to the High Court for a *supplicavit*, which is a mandatory writ compelling the justice to require security. But as the High Court may make an order for security to be given without the intervention of a justice of the peace, this writ is seldom used. 4 Steph. Com. 292. See **ARTICLES OF THE PEACE; BREACH OF THE PEACE.**

SUPPLICIUM.—In the civil law, any corporal punishment; it included death.

SUPPLIES.—The "supplies" in parliamentary proceedings signify the sums of money which are annually voted by the house of commons for the maintenance of the crown and the various public services.

SUPPLIES, (defined).' 68 Me. 368.
 — (in a statute). 5 Wend. (N. Y.) 510
 20 Id. 177; 9 N. W. Rep. 67; 3 Wis. L. N. 286
SUPPLY, (synonymous with "furnish"). 12 Bush (Ky.) 240.

SUPPLY, COMMISSIONERS OF.—Persons appointed to levy the land tax in Scotland, and to cause a valuation roll to be annually made up, and to perform other duties in their respective counties. See 19 and 20 Vict. c. 93, and *Bell Dict.*

SUPPLY, COMMITTEE OF.—In England, all bills which relate to the public income or expenditure must originate with the house of commons, and all bills authorizing expenditure of the public money are based upon resolutions moved in a Committee of Supply, which is always a committee of the whole house. The practice with regard to these bills is as follows: In the course of the session estimates are submitted to a Committee of Supply, and resolutions moved therein, granting to the crown the sums requisite for defraying the expenses attendant on the various branches of the public service. These resolutions having been considered and disposed of, such amongst them as may be affirmed are reported to the house, reconsidered, adopted or rejected. Under authority of those to which the house agree, the Lords of the Treasury issue the requisite funds for carrying on the service of the country. At the end of the session the supply resolutions are consolidated in the appropriation bill, which is sent up to the lords, and after being there considered and agreed to, receives the royal assent and becomes law. The lords may reject this or any other money bill, but it would be an invasion of the privileges of the commons if their lordships substantially modified measures of this class; the commons, however, do not object to consider verbal emendations which may be made by the other house.—*Dod Parl. Comp.*

SUPPLY THE PREMISES WITH WATER, (a covenant to). 4 Barn. & Ald. 266.

SUPPORT.—The right of support to land is either a natural right or an easement.

§ 1. **Natural right.**—Every proprietor of land is entitled to so much lateral support from his neighbor's land as is necessary to keep his soil at its natural level, *i. e.* his neighbor must not excavate so close to the boundary as to cause his land to fall or subside. Similarly, if one person is entitled to the surface of land, and the land beneath the surface belongs to another proprietor, the owner of the surface is entitled to vertical support as against him; *i. e.* the owner of the subjacent land must not cause subsidence of the surface unless he has an easement entitling him to do so. (See **EASEMENT**.) This natural right to support, whether lateral or vertical, does not extend to the case of land, the weight of which has been increased by buildings, unless it can be shown that the land would have sunk if there had been no buildings on it. Gale Eas. 358; Dart. Vend. 368.

§ 2. **Easement.**—The right to extraordinary support, *i. e.* to the support of land on which buildings have been erected, and which, consequently, requires more support than it did in its natural condition, is an easement. It was formerly considered that such an easement was not within the provisions of the English Prescription Act (*q. v.*), on the grounds that it is a negative easement; and that the second section of the act only applies to positive easements. (Gale Eas. 370.) Both these propositions have been discredited, if not overruled, by the recent decision of *Dalton v. Angus*, (*Angus v. Dalton*, 3 Q. B. D. 85; 4 Q. B. D. 162; 44 L. T. 844;) and it is now established that the easement of support may not only exist by virtue of an express grant, or in the case of an ancient messuage, but may also be acquired by twenty years' uninterrupted enjoyment.

§ 3. The easement of support to a building by a building, or the right of the owner of a building to have it lean against and be supported by a building belonging to his neighbor, seems to stand in the same position. It may also arise by implied grant under a disposition by the owner of two tenements. Gale 384 *et seq.*; *Angus v. Dalton*, *supra*. See **EASEMENT**, § 8; *see, also*, **ANCIENT HOUSES OR MESSUAGES**; **LOST GRANT**; **PRESCRIPTION**.

§ 4. To support a rule or order is to argue in answer to the arguments of the party who has shown cause against a rule or order *nisi*.

SUPPORT, (as applied to a family, defined). 19 Kan. 388.

— (in a will). 4 Johns. (N. Y.) Ch. 9; 2 Sandf. (N. Y.) Ch. 91; 3 *Id.* 120.

SUPPORT AND MAINTENANCE, (in a will). 68 Me. 133.

SUPPORT, HANDSOME, (in a will). 11 Pick. (Mass.) 252; 4 Wheel. Am. C. L. 454; 5 *Id.* 306.

SUPPORT OF THE FAMILY, (in a will). 2 Bland (Md.) 606.

SUPPORT OF A SERVANT, (what constitutes). 2 Dana (Ky.) 385.

SUPPORTING, MAINTAINING AND USING, (in a statute). 7 Barn. & C. 722.

SUPPORTS, (as applied to bridges, defined). 38 Vt. 606.

SUPPOSED, (in a deed). 13 Johns. (N. Y.) 257.

SUPPRESS, (in a statute). 42 Iowa 631.

SUPPRESSIO VERI.—Suppression of truth. One of the classes of fraud. Consult *Add. Torts* (4 edit.) 26. See **SUGGESTIO FALSI**.

SUPPRESSIO VERI, (is equivalent to a "*suggestio falsi*"). 13 Johns. (N. Y.) 403.

— (is ground for setting aside a sale). 1 Gr. (N. J.) Ch. 366.

SUPRA.—This word occurring by itself in a book refers the reader to a previous part of the book, like *ante*; it is also the initial word of several Latin phrases.

SUPRA PROTEST.—Subsequently to protest. See **ACCEPTANCE**, § 5.

Suprema potestas seipsam dissolvere potest (Bacon): Supreme power can dissolve itself.

SUPREMACY.—Sovereign dominion; authority; pre-eminence.

SUPREMACY, ACT OF.—The Stat. 1 Eliz. c. 1, whereby all foreign jurisdictions, whether spiritual or temporal, within the realm were excluded, and all spiritual jurisdiction was annexed to the crown, which might exercise the jurisdiction by commissioners.

SUPREMACY, OATH OF.—To uphold the supreme power of the kingdom in the person of the reigning sovereign.

SUPREME COURT.—A court of superior jurisdiction in many of the States of the United States. In most of them this is the court of last resort, the name differing slightly in some States. Thus, in

Connecticut it is called the "Supreme Court of Errors," and in Maine, Massachusetts and New Hampshire, the "Supreme Judicial Court." In New Jersey and New York, however, the Supreme Court is not the court of last resort.

SUPREME COURT OF JUDICATURE.—The court formed by the English Judicature Act, 1873, (as modified by the Judicature Act, 1875, the Appellate Jurisdiction Act, 1876, and the Judicature Acts of 1877, 1879 and 1881,) in substitution for the various superior courts of law, equity, admiralty, probate and divorce, existing when the act was passed, including the Court of Appeal in Chancery and Bankruptcy, and the Exchequer Chamber. It consists of two permanent divisions, viz., a court of original jurisdiction, called the "High Court of Justice," and a court of appellate jurisdiction, called the "Court of Appeal." (See those titles. Judicature Act, 1873, §§ 3, 4.) Its title of "supreme" is now a misnomer, as the superior appellate jurisdiction of the House of Lords and Privy Council, which was originally intended to be transferred to it, has been allowed to remain. See COURT.

SUPREME COURT OF THE UNITED STATES.—The highest tribunal in America. This court is vested by the United States Constitution with original and exclusive jurisdiction in all cases affecting ambassadors, public ministers and consuls, and those in which a State is a party, and appellate jurisdiction over all other cases within the judicial power of the United States, both as to law and fact, with such exceptions and under such regulations as congress may make. Its appellate powers extend not only to inferior tribunals of the United States, but also (when federal questions are involved) to those of the several States. The court is composed of a chief justice of the United States, and of eight associate justices.—*Abbott*.

SUPREME POWER.—The highest authority in a State, all other powers in it being inferior thereto. See 2 Ruth. Nat. Laws, b. 2, c. iv., p. 67.

SUPREMUS.—Last; the last.

Supremus est quem nemo sequitur (D. 50, 10, 92): He is last whom no one follows.

SUR—SUR DISCLAIMER—SUR DISSEISIN.—"Sur"="upon." In the titles of real actions "sur" was used to point out what the writ was founded upon. Thus, a real action

brought by the owner of a reversion or seignory, in certain cases where his tenant repudiated his tenure, was called "a writ of right sur disclaimer." So, a writ of entry sur disseisin was a real action to recover the possession of land from a disseisor. See CUI ANTE DIVORTIUM; WRIT OF ENTRY.

SUR CUI IN VITA.—A writ that lay for the heir of a woman whose husband had aliened her land in fee, and she had omitted to bring the writ of *cui in vita* for the recovery thereof; in which case, her heir might have this writ against the tenant after her decease.—*Cowell*. See CUI IN VITA.

SURCHARGE.—FRENCH: *sur*, over, in addition, in excess, and *charge*. See in *Harrison v. Carter*, 2 C P D 32, a description of a charity for the benefit of poor persons "surcharged by children."

§ 1. **Common.**—To surcharge a common is to put more cattle thereon than the pasture and herbage will sustain, or than the commoner has a right to do. (3 Bl. Com. 237; Co Litt. 165 a.) As to the remedy for this injury, see ADMEASUREMENT, § 2.

§ 2. **In accounts.**—Where an account is being judicially investigated in Chancery, and the party at whose instance it is taken shows that an item has been omitted for which the accounting party ought to give credit, he is said to "surcharge" the accounting party. Dan. Ch. Pr. 577. See ACCOUNT; FALSIFY.

§ 3. Under the English Public Health Acts, where an auditor disallows an item of expenditure by an urban authority as being illegal, he surcharges it on the person who made or authorized it; in other words, he makes him personally liable for the amount. Local Government Act, 1858, s. 60, § 1, repealed and re-enacted by the Public Health Act, 1875, s. 247, § 7.

SURCHARGE, (distinguished from "falsify"). 2 Edw. (N. Y.) 1, 23.

SURCHARGE AND FALSIFY.—See SURCHARGE, § 2.

SURETY.—

§ 1. A surety is a person who binds himself to satisfy the obligation of another person, if the latter fails to do so; thus, if A. owes B. money, and C., for good consideration, promises B. that he will pay him the money if A. does not, here C. is a surety for A., the principal debtor, and his promise constitutes a contract of suretyship. See *Lakeman v. Mountstephen*, L. R. 7 H. L. 24.

§ 2. In the general sense of the word, therefore, a surety is the same thing as a guarantor (*q. v.*), but in practice the term is usually restricted to the case of a person who binds himself by a bond; thus, it is

frequently necessary for a person who enters upon an office to obtain one or more sureties who bind themselves by a bond to answer for his acts and defaults in the performance of the office, either generally, or to a limited amount or a limited time. (*See* Chit. Cont. 485 *et seq.*; Snell Eq. 389.) A security given in a judicial proceeding also generally takes the form of a bond or recognizance with sureties. *See* BAIL; RECOGNIZANCE; SECURITY, §§ 2, 13 *et seq.*

§ 3. **Rights of surety.**—If a surety satisfies the obligation for which he has made himself liable, he is entitled to recover the amount from the principal debtor. If one of several sureties is compelled to pay the whole amount or more than his share, he is entitled to contribution from his co-sureties, (*see* CONTRIBUTION, § 2;) and if one of them has become insolvent, the solvent sureties may be compelled to contribute toward payment of the whole debt, as if the insolvent surety had never been liable. 1 White & T. Lead. Cas. notes to *Dering v. Earl of Winchelsea*.

§ 4. It is also a general rule that a surety is entitled to the benefit of all the securities which the creditor has against the principal; so that if a debt is secured by a bond with a surety, and also by a mortgage, and the surety pays the debt, he is entitled to stand in the place of the mortgagee and obtain repayment out of the mortgaged property. (*Id.*) And by the English Mercantile Law Amendment Act, 1856, every surety who pays the debt or performs the duty for which he is liable, is entitled to have assigned, to himself or a trustee, every judgment, specialty or other security held by the creditor, and to use the name of the creditor in any action or other proceeding.

§ 5. **Discharge of surety.**—If the creditor releases the principal debtor, this will discharge the surety from liability, unless the creditor reserves his rights against the surety; such a release is then in effect merely a covenant not to sue the principal debtor. (*Green v. Wynn*, 4 Ch. App. 204. *See* JOINT, § 5; RELEASE, § 3.) The surety may also be discharged by a variation of the contract by the creditor, or by the substitution of a new contract

before breach of the old one. *See* De Coly. Guar. ch. vi.

SURETY, (defined). 35 Mich. 42; 1 La. Ann. 122.

— (after name of a joint maker of a promissory note). 1 Mass. 156, 158; 5 *Id.* 358; 6 *Id.* 519; 2 N. Y. 406; 7 Wend. (N. Y.) 309; 10 *Id.* 314.

— (liability of). 9 Wheat. (U. S.) 720.

— (contract of, is to be construed strictly). 2 Ill. 35.

— (when cannot call on his principal). 8 Johns. (N. Y.) 249.

— (right of, to subrogation). 6 Halst. (N. J.) 410; 1 Hill (N. Y.) 652; 2 Johns. (N. Y.) 213.

— (what is a discharge of). 10 Pet. (U. S.) 257; 10 Johns. (N. Y.) 587; 11 Wend. (N. Y.) 312; 5 Ohio 207.

— (what does not discharge). 11 Wheat. (U. S.) 184; 2 N. H. 448; 6 Watts (Pa.) 508.

— (right of, to contribution). 17 Mass. 468; 2 Whart. (Pa.) 364.

SURETY OF THE PEACE.—*See* ARTICLES OF THE PEACE.

SURETY OF THE PEACE, (defined). 4 Bl. Com. 255; 4 Steph. Com. 298–295.

SURETYSHIP, (defined). 9 Ala. 42.

SURFACE.—*See* LAND, § 2; MINERALS; SUPPORT.

SURFACE, (in a statute). 23 Ohio St. 558.

SURFACE WATER, (when becomes a water-course). 55 Mo. 462, 467.

SURFACING, (defined). 72 Ill. 161, 167.

SURGEON.—Properly, one who cures diseases or injuries by manual operation.

SURGEON OF THE QUEEN'S PRISON.—An officer who used to be appointed by the home secretary during pleasure. 5 and 6 Vict. c. 22. *See* QUEEN'S PRISON.

SURMISE.—

§ 1. A suggestion or allegation.

§ 2. In ecclesiastical practice, an allegation in a libel (*q. v.* § 5) is called a "surmise." A collateral surmise is a surmise of some fact not appearing in the libel. Phillim. Ecc. L. 1445.

SURNAME.—The family name; the name over and above the Christian name.—*Encycl. Lond.* The part of a name which is not given in baptism; the last name; the name common to all members of a family. Surnames were originally acquired by accident and retained by custom. They may be changed in the same manner. A bastard can have a surname by custom or grant only. *See* NAME.

SURPLICE FEES.—Fees payable on ministerial offices of the church, such as baptisms, funerals, marriages, &c. 2 Steph. Com. (7 edit.) 740; 3 *Id.* 312.

SURPLUS.—That which is left from a fund which has been appropriated for a particular purpose; the remainder of a thing; the overplus; the residue.—*Bouvier*.

SURPLUS, (in a will). 18 Ves. 466; 8 Com. Dig. 437.

SURPLUS EARNINGS, (in tax act). 76 N. Y. 64, 74.

SURPLUS PROFITS, (what are not). 6 Paige (N. Y.) 488.

SURPLUSAGE is where there is something over or in excess. In pleading, surplusage is the allegation of unnecessary matter, and is forbidden. (5 Steph. Pl. 467; Co. Litt. 303b.) But in most cases such matter will not vitiate the pleading, but will be disregarded.

§ 2. **Rent by surplusage.**—Where A. holds land of B. in fee at a certain rent (*e. g.* five shillings), and B. holds the same land of C. at a less rent (*e. g.* one shilling), and C. purchases A.'s estate, so that B.'s seignory or mesnalty (*q. v.*) becomes extinct; here C. is bound to pay to B. a rent equal to the difference between A.'s rent and B.'s rent (*i. e.* four shillings), and this is called, in the old books, a rent by surplusage. Litt. §§ 231, 232; Co. Litt. 150b, and Hargrave's note, 309b.

SURPLUSAGE, (in act concerning intestates). 1 Dall. (U. S.) 482.

— (will not in general vitiate a pleading). 15 Wend. (N. Y.) 351.

SURPLUSAGE OF ACCOUNTS.—A greater disbursement than the charge of the accountant amounts unto. In another sense, surplusage is the remainder or overplus of money left.—*Jacob*.

Surplusagium non nocet (9 H. 626): Surplusage hurts not.

SURPRISE.

§ 1. Where a person enters into a contract, conveyance, or the like, with excessive haste or want of deliberation, this fact may give rise to the inference that there was no true consent, or that the consent was not free, and that the transaction ought, therefore, to be set aside on the ground of surprise or improvidence. *Evans v. Llewellyn*, 2 Bro. C. C. 150; 1 Cox 333; Poll. Cont. 537. See **CATCHING BARGAINS**; **UNDUE INFLUENCE**.

§ 2. In procedure, a judgment, nonsuit, or order may be set aside, or a new trial

ordered, on the ground of surprise, if the court thinks that substantial injustice has been done. Thus, if a verdict is obtained by a trick, a new trial will be ordered. Arch. Pr. 1220.

SURPRISE, (as ground for new trial). 6 Halst. (N. J.) 242; 2 Hill (N. Y.) 106; 47 Superior (N. Y.) 287; 25 Wend. (N. Y.) 663.

SURREBUTTER, under former common law practice, is the pleading which follows the rebutter. (Steph. Pl. 64.) The same name is generally applied to the corresponding pleading under the new English system. See **PLEADING**, § 6.

SURREJOINDER, under the practice both at common law and in Chancery, is the pleading which follows the rejoinder. (Mitf. Pl. 321.) It has long been obsolete in English Chancery. The same name is commonly applied to the corresponding pleading under the new English system. See **PLEADING**, § 6.

SURRENDER.

§ 1. **Freehold land.**—In the law of real property, surrender "is a yeelding up an estate for life or yeares to him that hath an immediate estate in reversion or remainder, wherein the estate for life or yeares may drowne [*i. e.* merge] by mutuall agreement betweene them." (Co Litt. 337b.) Thus, if A., being tenant in fee of land, grants a lease for years to B., and B. surrenders the term to A., it ceases to exist, being merged in A.'s reversion.

§ 2. **In deed.—In law.**—Surrenders are of two kinds—in deed and in law. A surrender in deed is one made by express words. It must now, in every case, be effected by a deed. (Woodf. Land. & T. 270.) Surrenders in law take effect by implication or operation of law, without express words. Thus, if a lessee accepts a new lease incompatible with his existing lease, this operates as a surrender in law of the latter. Co. Litt. 338a; 2 Bl. Com. 326 n. See **MERGER**.

§ 3. **Copyholds.**—A surrender is a principal mode of aliening copyholds. Every tenancy in copyholds, though practically amounting to more or less absolute ownership, is in theory merely a tenancy at will, which is, of course, incapable of being transferred as such by the tenant; for if he attempted to convey his interest by a common law conveyance, he would forfeit his estate. (Litt. § 74. See **TENANT AT WILL**.)

Hence, when a copyholder wishes to transfer his interest in the land, he surrenders it into the hands of the lord, in favor of (technically, *to the use of*,) the intended transferee, or surrenderee, as he is called; and the lord thereupon admits the surrenderee, *i. e.* accepts him as tenant in lieu of the surrenderor. (*Id.* See ADMITTANCE.) "The essential part of a surrender appears to be the giving up of the customary seisin to the lord; and where this is effectually done, the form of relinquishment is not, as it seems, essential, unless the rights of a third person are injured." *Elt. Copyh.* 62.

§ 4. **Formal surrenders** are made by the surrenderor delivering to the lord, steward, or other person taking the surrender, a rod, (*See VERGE.* In practice the rod is generally represented by an office ruler or an umbrella,) straw, glove, or other symbol which represents the seisin of the land. A memorandum of the surrender is entered on the court rolls, and a copy of it, generally on parchment, and signed by the surrenderor and steward, is delivered to the surrenderee.

§ 5. **Conditional.**—A mortgage of copyholds is generally effected by a conditional surrender, or surrender made upon condition that, on payment of the mortgage debt on a certain day, the surrender shall be void. If the debt is not paid on the day fixed, the mortgagor still has an equity of redemption in the same way as if the land were freehold. (*Wms. Real Prop.* 431.) As to surrenders of copyholds for estates tail, and as disentailing assurances, see ESTATE TAIL, § 7.

§ 6. **Surrender to uses of will.**—Formerly, copyholds in some manors were not devisable at all, or devisable subject to restrictions, while in many manors they were devisable by the testator making a surrender to the use of his will, and then devising the land as he wished. This necessity was abolished by Stat. 55 Geo. III. c. 192; and, by the Wills Act, full provision was made for the devise of copyholds in all cases. It seems, however, that a married woman cannot devise her copyholds without a surrender to the use of her will, made after separate examination by the steward, and with her husband's assent; and that a joint tenant cannot devise his share without a previous surrender. *Elt. Copyh.* 85.

§ 7. Formerly, surrenders were usually made in court, *i. e.* at a customary Court Baron (*q. v.*); and surrenders made "out of court," (*i. e.* at any other place or time,) were in some cases invalid, unless they were afterwards presented in court by the homage. (*Watk. Copyh.* 79.) Now, however, the entry of the surrender on the rolls of the manor is sufficient. Stat. 4 and 5 Vict. c. 35, § 89.

§ 8. **Dayne surrender.**—"In the extensive district comprised in the manor of Taunton Deane, in Somersetshire, there is a peculiar conveyance known as a 'Dayne surrender,' which is used when a copyholder alienes his tenement, but desires to retain a part for his own life. The purchaser is admitted to the whole of the land, (which is called the 'Dayne tenement,') and pays a fine of one-third of the amount of an ordinary admittance fine, and further makes himself responsible for the heriot to be paid on

the death of the tenant for life. On the death of the surrenderor, the whole land belongs to the Dayne tenant." *Elt. Copyh.* 81. See ADMITTANCE; COPYHOLD; PRESENTMENT, § 1.

§ 9. **Charter.**—A corporation created by charter may give up or surrender its charter to the people, unless the charter was granted under a statute, imposing indefeasible duties on the bodies to which it applies. *Grant Corp.* 45.

SURRENDER, (defined). 17 Bankr. Reg. (U. S.) 399, 401; 7 Com. Dig. 380; 1 Chit. Gen. Pr. 316, 347; *Shep. Touch.* ch. 17, p. 300.

_____ (of a charter, what is). 19 Johns. (N. Y.) 474.

_____ (of an estate, what is). 2 Hill (N. Y.) 278.

_____ (of an estate, what is not). 12 Johns. (N. Y.) 337.

_____ (of a lease, what is). 6 Wend. (N. Y.) 569.

_____ (of a lease, what is not). 7 Johns. (N. Y.) 227; 15 Wend. (N. Y.) 400.

SURRENDER OF FUGITIVES.—

Penal laws of foreign countries are strictly local, and affect nothing more than they can reach, and can be seized by virtue of their authority. A fugitive who passes to this country comes with all his transitory rights. He may recover money held for his use, and stock, obligations, and the like; and cannot be affected in this country by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend. (*Per Lord Loughborough, Folliott v. Ogden*, 1 H. Bl. 185.) Mr. Justice Buller, in the same case (3 T. R. 733), on a writ of error, said: "It is a general principle that the penal laws of one country cannot be taken notice of in another." The same doctrine was affirmed by Lord Ellenborough in a subsequent case. (*Wolff v. Oxholm*, 6 Mau. & Sel. 99.) And it has been promulgated by Lord Brougham, in very clear and authoritative terms: "The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of the jurisdiction." *Warrender v. Warrender*, 9 Bligh 119. See, also, *Kames on Equity*, b. 3, c. viii., and *Pardessus, Droit Com.* 5, 1467.

There is another point which has been a good deal discussed of late, whether a nation is bound to surrender up fugitives from justice who escaped into its territories. The practice has prevailed as a

matter of comity, and sometimes of treaty, between some neighboring States, sometimes between distant States having much intercourse with each other. Paul Voet remarks that, under the Roman Empire, this right of having a criminal remitted for trial to the proper *forum criminis* was unquestionable; but that, according to the custom of almost all Christendom, the remitter of criminals, except in cases of humanity, is not admitted, and, when done, it is to be upon letters rogatory, so that there may be no prejudice to the local jurisdiction. As quoted by Story's Conf. of Laws, § 626.

It has been treated by other distinguished jurists as a strict right, constituting a part of the law and usage of nations, that offenders charged with a high crime, who have fled from the country in which it was committed, should be delivered up by the sovereign of the country where they are found. Thus, Vattel contends that it is the duty of the government where the criminal is, to deliver him up, or to punish him; and that if it refuse so to do, it becomes responsible as an accomplice in the crime. This opinion is maintained with great vigor by Grotius, Heineccius, Burlemaqui and Rutherford. There is common law authority on the same side, and Mr. Chancellor Kent adopted the doctrine in a case which called directly for its decision.

On the other hand, Puffendorff explicitly denies it as a matter of right, Martens is of the same opinion, and Lord Coke maintains that the sovereign is not bound to surrender up criminals from other countries who have sought shelter in his dominions. (Consult Story's Conf. of Laws, § 620 *et seq.*)—*Wharton. See EXTRA-DITION.*

SURRENDEREE.—The person to whom a surrender is made.

SURRENDEROR.—The person who makes a surrender.

SURREPTITIOUS.—Fraudulent; stealthy. For the distinction between surreptitious and obreptitious fraud, *see Sanchez de Matrimonio.*

SURRISE.—To forbear or neglect. Bract. 1, 5.

SURROGATE.—

§ 1. **In English law.**—A person appointed by a bishop or an ecclesiastical judge to act for him. (Phillim. Ecc. L. 1191,) *e. g.* to grant licenses of marriage. Stat. 4 Geo. IV. c. 76, § 19.

§ 2. **In American law.**—The official name in some of the States of the judge to whom jurisdiction of the probate of wills, the grant of administration and of guardianship is confided. In other States he is called "judge of probate," "register," "judge of the orphans' court," etc. He is ordinarily a county officer, with a local jurisdiction limited to his county.—*Bouvier.*

SURSUMREDDITIO.—A surrender.

SURVEY.—(1) The act by which the quantity of a piece of land is ascertained. (2) The paper containing a statement of the courses, distances, and quantity of land.

SURVEY, (synonymous with "plan" and "description"). 13 Gray (Mass.) 492, 497.

— (does not necessarily mean a map). Sax. (N. J.) 370.

— (what is evidence of). 13 Serg. & R. (Pa.) 113.

— (when evidence of a boundary). 5 Watts (Pa.) 348.

— (what is not essential to the validity of). 2 Watts (Pa.) 390.

— (in an insurance policy). 25 Wis. 291.

SURVEYOR.—(1) One who makes surveys of land. (2) One who has the overseeing or care of another person's land or works.

SURVEYOR OF THE PORT.—An officer of the customs in each of the larger ports of entry. His duties involve the various measures to be taken for ascertaining the quantity, condition, and value of merchandise brought into the port. U. S. Rev. Stat. § 2627.

SURVIVE, (when action does). 4 Mass. 481.

— (in a will). 101 Mass. 134; L. R. 2 Eq. 341.

SURVIVING, (in a deed). Baldw. (U. S.) 196.

— (in a trust deed). 5 T. R. 431.

— (in a will). 8 C. E. Gr. (N. J.) 238;

1 McCart. (N. J.) 32; 8 Barn. & C. 231; 1 Coll. 416; 9 Jur. 269; 13 L. J. Ch. n. s. 240; 7 Ch. D. 255; L. R. 5 Eq. 349; 8 Ves. 10, 11.

SURVIVING AND REMAINING, THEN, (in a will). 1 Barn. & C. 609.

SURVIVING BROTHERS, (in a will). 9 Jur. 822.

SURVIVING CHILD OR CHILDREN, (in a will). 12 Ch. D. 205.

SURVIVING CHILDREN, (in a will). 4 Zab. (N. J.) 636; 1 Coll. 103.

SURVIVING SONS AND DAUGHTERS, (in a will). Spenc. (N. J.) 223.

SURVIVOR, (equivalent to "other"). 1 Jur. 377; 17 Ves. 482.

— (in a settlement). L. R. 19 Eq. Cas. 20.

— (in a will). 85 Ill. 41; 2 Cow. (N. Y.) 344; 16 Johns. (N. Y.) 382; 8 Paige (N. Y.) 375; 25 Wend. (N. Y.) 119; 19 Ohio St. 30; 2 Am. Rep. 369; 2 Ky. L. Rep. 262; 17 L. J. N. S. Ch. 457; L. R. 8 Ch. 71; 2 Ch. D. 348; 1 Mau. & Sel. 428; 1 Russ. & M. 407; 19 Ves. 534; 4 Com. Dig. 155.

SURVIVOR AND SURVIVORS, (in a will, not equivalent to "other and others"). 3 Russ. 217.

SURVIVOR AND SURVIVORS OF THEM, (in a will). 1 Bos. & P. N. R. 82; 3 Burr. 1831.

***SURVIVOR OR SURVIVORS**, (in a will). 5 Ves. 468; 8 Com. Dig. 475.

SURVIVORS, (equivalent to "others"). 2 Con. & L. 344.

— (not equivalent to "others"). 2 Hare 14.

— (in a will). 12 Wheat. (U. S.) 153, 157; 10 Bush (Ky.) 36; 2 Mass. 62; 15 Id. 292; 3 Harr. (N. J.) 33; Spenc. (N. J.) 6, 9; 3 Paige (N. Y.) 290; 3 Sandf. (N. Y.) Ch. 293; 23 Wend. (N. Y.) 518; 6 Watts. (Pa.) 21; 2 Yeates (Pa.) 407; 1 Desaus. (S. C.) 325; 7 Hare 39; 6 L. J. Ch. 118; L. R. 20 Eq. 378; 1 Madd. Ch. 467; 6 Taunt. 218; 2 Ves. 534; 14 Id. 577.

SURVIVORS OF THEM, (in a will). 2 Atk. 123.

SURVIVORSHIP is where a person becomes entitled to property by reason of his having survived another person who had an interest in it. The most familiar example is in the case of joint tenants, the rule being that on the death of one of two joint tenants the whole property passes to the survivor. (But see **JOINT**; **JUS ACCRESCENDI**.) Another example is, the right of a wife—(1) to all her leaseholds not disposed of by her husband during his lifetime by conveyance or other act *inter vivos*; (2) to all her choses in action not reduced into possession by him; (3) to such of her reversionary interests as have not been disposed of by her. See **CHOSE IN ACTION**; **REDUCTION INTO POSSESSION**; **REVERSIONARY INTEREST**, § 3; see, also, **COMMORIENTES**; **DEATH**, § 3.

SURVIVORSHIP, (clause of, in a will). 8 Com. Dig. 1037.

SURVIVORSHIP, WITH THE BENEFIT OF, (in a will). 3 Atk. 524.

SUS. PER COLL.—On the trial of criminals, the usage is for the judge to sign the calendar or list of all the prisoners' names, with their separate judgments in the margin, which is left with the sheriff. In the case of a capital felony, it is written opposite to the prisoner's name, "hanged by the neck;" formerly in the days of

Latin and abbreviation, *sus. per coll. for suspendatur per collum*. 4 Bl. Com. c. xxxii.

SUSPEND.—To forbid an attorney or solicitor or ecclesiastical person from practicing for an interval of time. See **DISBAR**.

SUSPENSE, (defined). Co. Litt. 313a.

SUSPENSION.—

§ 1. **Estate, right, &c.**—An estate, interest, right or remedy is said to be suspended when it is extinguished for a time, but may afterwards revive; thus, if a copyholder in his own right become seised of the manor in right of his wife, the copyhold interest in his land will be suspended during the coverture; so if a person holding land in fee by certain rents or services, acquires the seignory during his life, the rents, services, &c., are suspended during his life. Co. Litt. 313a; Co. Copyh. § 62; 3 Pres. Conv. 9; Gale Easem. 581 *et seq.* See **UNITY OF POSSESSION**.

§ 2. **Ecclesiastical law.**—In ecclesiastical law, suspension is of two kinds. Suspension relating only to the clergy is where a clergyman is temporarily deprived either of his office or his benefice, or both; suspension from office prevents him from officiating as a minister; suspension from benefice deprives him of the profits of the living. (Phillim. Ecc. L. 1375; Martin v. Mackonochie, 4 Q. B. D. 697.) The other sort of suspension, which extends to the laity as well as the clergy, is suspension *ab ingressu ecclesie*, or from the hearing of divine service and receiving the holy sacrament. Phillim. Ecc. L. 1375.

SUSPENSION, (in ecclesiastical law). 6 App. Cas. 437.

SUSPENSION OF ABSOLUTE OWNERSHIP, (synonymous with "suspension of the power of alienation"). 5 Redf. (N. Y.) 281.

SUSQUEHANNA, THE, (is not within the legal definition of a navigable river). 2 Binn. (Pa.) 479.

SUTHDURE.—The south-door of a church, where canonical purgation was performed, and plaints, &c., were heard and determined.

SUUS HÆRES.—In the civil law, a proper or right heir.

SUUS JUDEX.—A proper judge; one who has cognizance of a cause.

SWAMP AND OVERFLOWED LAND, (in a statute). 26 Cal. 336; 30 Id. 385, 379; 31 Id. 542; 33 Id. 461; 50 Id. 142.

SWARF-MONEY.—Warth-money, or guard-money paid in lieu of the service of castleward.—Cowell.

SWEAR.—To put on oath; to administer an oath to. See **OATH**.

SWEARING.—The act of declaring upon oath. Profane swearing and cursing is an offense against God and religion,

punishable summarily by fine. 10 Geo. II. c. 21. *See* R. v. Scott, 4 B. & S. 368. *See, also*, BLASPHEMY; OATH; PROFANITY.

SWEARING THE PEACE.—Showing to a judge that one has just cause to be afraid of another in consequence of his menaces, in order to get him bound to keep the peace.

SWEINMOTE, COURT OF.—*See* COURT OF SWEINMOTE.

SWINDLER, (equivalent to "cheat"). 2 H. Bl. 531, 532.

— (when an actionable word). 10 How. (N. Y.) Pr. 128.

— (when not actionable). 6 Cush. (Mass.) 185; 2 Mass. 406; 3 Hill (N. Y.) 139; 1 Chit. Gen. Pr. 44.

SWINDLING, (defined). 2 Port. (Ala.) 157; 2 Blackf. (Ind.) 429; 10 Tex. App. 279.

— (what constitutes). 1 Bay (S. C.) 282.

— (what is not). 1 Bay (S. C.) 353.

SWINE, (in statute of 1805, c. 100, concerning exemptions from attachments and executions). 15 Mass. 205.

SWOLING OF LAND.—So much land as one's plough can till in a year; a hide of land.—*Cowell*.

SWORN, (legally means "sworn to"). 7 Allen (Mass.) 534.

SWORN, ACCORDING TO LAW, (applied to an officer upon entering office). 41 Me. 226.

SWORN BROTHERS.—Persons who, by mutual oaths, covenant to share in each other's fortunes. *See* Sedg. Edw. Conf. c. 35.

SWORN, WAS DULY, (in an indictment). 1 Ry. & M. 299, 302.

SYB AND SOM.—Peace and security.—*Termes de la Ley*.

SYLLOGISM.—The full logical form of a single argument. It consists of three propositions (two premises and the conclusion), and these contain three terms, of which the two occurring in the conclusion are brought together in the premises by being referred to a common class. Consult Mill Log.

SYLVA CÆDUA.—Wood under twelve years' growth. 45 Edw. III. c. 23.

SYMBOLÆOGRAPHY.—The art or cunning rightly to form and make written instruments. It is either judicial or extra-judicial; the latter being wholly occupied with such instruments as concern matters not yet judicially in controversy, such as instruments of agreement or contracts, and testaments or last wills.—*Wharton*.

SYMBOLIC DELIVERY.—*See* DELIVERY, § 2; LIVERY OF SEISIN.

SYMBOLIC DELIVERY, (defined). 2 Bl. Com. 313-315; 1 Steph. Com. 507, 508.

SYMBOLUM ANIMÆ.—A mortuary, or soul-scot.

SYMOND'S INN.—Formerly an Inn of Chancery.

SYNALLAGMATICAL.—That which involves mutual and reciprocal obligations and duties.

SYNCHRONIZE.—To concur in time.

SYNCOPE.—To cut short, or pronounce things so as not to be understood.—*Cowell*.

SYNDIC.—Where a testator (in England) appoints a corporation aggregate to be his executor, administration with the will annexed will be granted to their syndic, *i. e.* a person specially appointed by the corporation for the purpose. Browne Prob. Pr. 129; Wms. Exec. 220.

SYNDICATE is a mercantile term which has recently come into use to denote an association of persons for a temporary purpose. Thus, if several persons unite to subscribe for, or guarantee the subscription of, an issue of shares or bonds, with a view to dividing the risk and the profit, they are said to "form a syndicate." Sometimes a syndicate is formed by persons who are individually possessed of property of the same description (generally shares, or the like), and wish to subject it to a common management, with a view to its realization, after which each member takes the profit or loss accruing in respect of his proportion.

SYNGRAPH.—In the civil law, a deed, bond, or writing, under the hands and seals of all the parties.

SYNOD.—A meeting or assembly of ecclesiastical persons concerning religion; being the same thing, in Greek, as convocation in Latin. There are four kinds: (1) A general or universal synod or council, where bishops of all nations meet. (2) A national synod of the clergy of one nation only. (3) A provincial synod, where ecclesiastical persons of a province only assemble, being now what is called the convocation. (4) A diocesan synod, of those of one diocese. A synod in Scotland is composed of three or more presbyteries.—*Wharton; Jacob*.

SYNOD, (defined). 41 How. (N. Y.) Pr. 302, 344.

SYNODAL.—A tribute or payment in money paid to the bishop or archdeacon by the inferior clergy, at the Easter visitation. 25 Hen. VIII. c. 10.

SYNODALES TESTES.—Synodsmen (corrupted into sidesmen) were the urban and rural deans, now the church wardens. *See* SIDESMEN.

T.

T—In England, every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was at one time marked with this letter upon the brawn of the thumb. The practice is abolished. 7 & 8 Geo. IV. c. 27. *See* BENEFIT OF CLERGY.

T. R. E.—The initials of the phrase, *tempore regis Edwardi*.

TABARD.—A short gown; a herald's coat; a surcoat.

TABARDER.—One who wears a tabard or short gown. The name is still used as the title of certain bachelors of arts on the old foundation of Queen's College, Oxford.—*Encycl. Lond.*

TABELLIO.—A Roman officer who reduced contracts and wills into proper form, and attested their execution.

TABERNAICULUM.—In old records, a public inn, or house of entertainment.—*Cowell*.

TABLE RENTS.—Payments which used to be made to bishops, &c., reserved and appropriated to their table or house-keeping.

TABLEAU OF DISTRIBUTION.—In Louisiana law, a list of creditors of an insolvent estate, stating the debt of each. 4 Mart. (La.) N. S. 535.

TABULA IN NAUFRAGIO.—A plank in a wreck. *See* TACKING, § 1.

TABULÆ NUPTIALES.—In the civil law, a written record of a marriage; or the agreement as to the *dos*.

TABULARIUS.—In the civil law, a notary.

TACFREE.—Exempt from rent, payments, &c.

TACIT.—A communication of intention is said to be tacit when it consists of mere silence. 3 Sav. Syst. 248.

As to the distinction between "tacit" and "constructive," "express" and "implied," *see* those titles.

TACIT RELOCATION.—In the Scotch law, a silent or understood reletting of premises after the expiration of a lease, upon the same terms, &c., as those of such lease.

Tacita quædam habentur pro expressis (8 Co. 40): Things unexpressed are sometimes considered as expressed.

TACK.—A lease or contract of location; also an addition, supplement.

TACK DUTY.—Rent reserved upon a lease.

TACKING.—

§ 1. In the English law of mortgages, where land is mortgaged by ordinary deeds of mortgage to several persons in succession, each ignorant of the security granted to the other, the general rule is that they rank in order of date. But the first mortgagee, who alone obtains the legal estate, (as to the priorities where the first mortgage is an equitable one, *see* PRIORITY,) has this advantage over the others, that if he takes a further charge on a subsequent advance to the mortgagor, without notice of any intermediate second mortgage, he will have priority in respect of his subsequent advance over the second mortgagee; in other words, he will be in the same position as if he had made his subsequent advance at the same time that he made his original advance. And if a third mortgagee, who has made his advance without notice of a second mortgage, can procure a transfer to himself of the first mortgage, and thus acquire the legal estate, he may tack or annex his third mortgage to the first mortgage, and so postpone the second mortgagee; in other words, he is in the same position as if he had advanced the amounts of both the first and third mortgages at the date when the first mortgage was made.

§ 2. The term "tacking," though especially applied to the case of a subsequent mortgagee getting in the legal estate, is also applied to the first case given above, namely, that of a first mortgagee adding a subsequent advance to his first mortgage. The essentials to the operation of tacking are—(1) possession of the legal estate; (2) absence of notice, at the time of making the advance to be tacked, of the existence of the incumbrance which will be postponed.

§ 3. Tacking never prevailed extensively in America, being inconsistent in doctrine with the operation of the recording acts, and was abolished, in England, from the 7th of August, 1874, to the 1st of January, 1876, by the operation of the Vendor and Purchaser Act, 1874; it was restored as from the latter date by the Land Transfer Act, 1875, without prejudice to anything done in the interval. Wms. Real Prop. 440; Fish. Mort. 599 *et seq.*; 1 White & T. Lead. Cas. 550. *See* CONSOLIDATION OF SECURITIES; MORTGAGE; PRIORITY.

TACKLE, (in a policy of insurance). 3 Doug. 223.

TAIL.—See **ESTATE TAIL**.

TAILAGE.—A piece cut out of the whole; a share of one's substance paid by way of tribute; a toll or tax.—*Cowell*.

TAILLE.—The fee which is opposed to fee-simple, because it is so minced or pared that it is not in the owner's free power to dispose of it, but it is, by the first giver, cut or divided from all other, and tied to the issue of the donee—in short, an estate tail. See **ESTATE TAIL**.

TAILZIE, or ENTAIL.—In the Scotch law, an arbitrary line of succession laid down by a proprietor, in substitution of a legal line of succession. A deed of tailzie creates a Scotch entail by which, until 11 and 12 Vict. c. 36; 16 and 17 *Id.* c. 94; and 31 and 32 *Id.* c. 84, an estate might be tied up forever. See, also, 38 and 39 *Id.* c. 61.

TAKE.—To take means to seize: as to take by right of eminent domain; to be entitled to: as a devisee takes under the will; to obtain: as to take a verdict.

TAKE, (synonymous with "arrest"). 9 Gray (Mass.) 267.

_____ (equivalent to "require"). 29 Ala. 542, 555.

_____ (as synonymous with "steal"). 3 Binn. (Pa.) 519.

_____ (not synonymous with "steal"). 12 Conn. 228.

_____ (in a contract). 2 N. Y. 153.

_____ (in a statute). 2 Pet. (U. S.) 527; 9 *Id.* 378; 4 Paige (N. Y.) 422; 1 Str. 353.

TAKE AND CARRY AWAY, (in a statute). 3 Pa. 147, 148.

TAKE PRIVATE PROPERTY, (in constitution). 5 Wend. (N. Y.) 455.

TAKEN, (synonymous with "seized," "injured," "destroyed," or "deprived of"). 9 Ind. 433, 436.

_____ (in writ of replevin). 17 Mass. 610.

_____ (in attachment law). 1 Mass. 122.

TAKEN FOR PUBLIC USES WITHOUT JUST COMPENSATION, (in State constitution). 34 Me. 247; 43 *Id.* 356.

TAKEN OUT OF THE STATE, SHALL BE, (in an agreement). 1 Hill (S. C.) 150.

TAKING, (what is not). 6 Park. (N. Y.) Cr. 129.

_____ (in trespass *de bonis*). 54 Cal. 127.

_____ (when will support replevin). 15 Wend. (N. Y.) 631.

_____ (in State constitution prohibiting the taking of private property for public use). 14 Barb. (N. Y.) 405.

_____ (in a statute). 7 Metc. (Mass.) 84; 3 Abb. (N. Y.) App. Dec. 285; 33 Ilow. (N. Y.) Pr. 428; 3 Pa. 521.

TAKING POSSESSION, (what is not). 15 Eng. L. & Eq. 255.

TAKING PRIVATE PROPERTY, (what constitutes). 14 Conn. 146; 21 *Id.* 294; 2 Stockt. (N. J.) 352 25 Vt. 465.

TAKING PRIVATE PROPERTY, (what is not). 18 How. (U. S.) 272; 6 Otto (U. S.) 521; 3 Cal. 69; 11 Metc. (Mass.) 55; 37 N. Y. 267; 17 Wend. (N. Y.) 571; 18 *Id.* 34.

TALES (dissyllabic).—If, when a jury has been summoned, a sufficient number of jurors do not appear, or if, by reason of challenges or exemptions, a sufficient number do not remain to make up the proper number, either party may pray a tales, *i. e.* ask the court to make up the deficiency. A tales (Latin, such,) is a supply of *such* men as were summoned upon the first panel. For this purpose a writ of *decem tales, octo tales*, used to be issued to the sheriff, but by Stat. 6 Geo. IV. c. 50, § 37, the judge is empowered to award a *tales de circumstantibus, i. e.* to command the sheriff to return so many other men duly qualified as shall be present or can be found, to be taken first from those summoned on the common jury panel, if the deficiency is of special jurors, and if there are not enough common jurors, then from any persons who are present in court or can be found. (3 Bl. Com. 364; 3 Steph. Com. 528; 4 *Id.* 424.) It is said, however, that the old practice of directing a *decem* or *octo tales* to be summoned still applies to trials at bar, as the Stat. 6 Geo. IV. is confined to trials at *Nisi Prius*. (Arch. Pr. 347.) The jurors so added are called "talesmen."

TALES DE CIRCUMSTANTIBUS.—So many of the bystanders. See **TALES**.

TALESMAN.—A person summoned to act as a juror from amongst the bystanders in the court. See **TALES**.

TALION.—The law of retaliation. See **LEX TALIONIS**.

Talis interpretatio semper fienda est, ut evitetur absurdum, et inconueniens, et ne iudicium sit illusorium (1 Co. 52): Interpretation is always to be made in such a manner that what is absurd and inconvenient may be avoided, and the judgment be not illusory.

Talis non est eadem; nam nullum simile est idem (4 Co. 18): What is like is not the same: for nothing similar is the same. Therefore, there is no estoppel by contrary judgment in cases exactly similar, but the matter is said to be concluded by authority. See **ESTOPPEL**.

Talis res, vel tale rectum, quæ vel quod non est in homine adtunc superstitie sed tantummodo est et consistit in consideratione et intelligentia legis, et quod alii dixerunt talem rem vel tale rectum fore in nubibus (Co. Litt. 342): Such a thing or such a right as is not vested in a person then living, but merely exists in the consideration and contemplation of law [is said to be in abeyance], and others have said that such a thing or such a right is in the clouds.

TALITER PROCESSUM EST.—Upon pleading the judgment of an inferior court, the proceedings preliminary to such judgment, and on which the same was founded, must, to some extent, appear in the pleading, but the rule is that they may be alleged with a general allegation that "such proceedings were had," instead of a detailed account of the proceedings themselves, and this general allegation is called the "*taliter processum est*" (1 Wms. Saund. 112, 113; Steph. Pl. (5 edit.) 369). A like concise mode of stating former proceedings in a suit is adopted at the present day in Chancery proceedings upon petitions and in actions in the nature of bills of revivor and supplement.—*Brown*.

TALLAGE.—See **TAILLAGE**.

TALLAGERS.—Tax or toll-gatherers; mentioned by *Chaucer*.

TALLAGIUM FACERE.—To give up accounts in the Exchequer, where the method of accounting was by tallies.

TALLATIO.—A keeping account by tallies.—*Cowell*.

TALLEY, or TALLY.—A stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts; one part was held by the creditor, and the other by the debtor. The use of tallies in the Exchequer was abolished by 23 Geo. III. c. 82, and the old tallies were ordered to be destroyed by 4 and 5 Will. IV. c. 15.—*Wharton*.

TALLIA.—Commons in meat and drink; a tax or tribute; tallage or taillage. See **TAILLAGE**.

TALLY TRADE.—A system of dealing by which dealers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly instalments.—*McCull. Dict.* A tally was a common security for money in the days of Edward I. 2 Reeves Hist. Eng. Law c. xi., p. 253, n. (b).

TAM QUAM.—Writ of error from inferior courts, when the error is supposed to be as well in giving the judgment as in awarding execution upon it. (*Tam in redditione iudicii, quam in adjudicatione executionis.*)

TANGIBLE PROPERTY.—Corpo-
real property.

TANISTRY, or TANISTRIA.—An ancient municipal law or tenure, which allotted the inheritance of lands, castles, &c., to the oldest and most worthy and capable house of the deceased's name and blood, without any regard to proximity. This, in reality, was giving it to the strongest, and naturally occasioned bloody wars in families; for which reason it was abolished in the reign of James I. Encycl. Lond.; 3 Hallam Const. Hist. c. xviii. 377.

TANNERIA.—In old English law, tannery; the trade or business of a tanner.

Tantum bona valent, quantum vendi possunt (Shep. Touch. 142): Goods are worth so much as they can be sold for.

TAPERING, (defined). 2 Stark. 249, 250; Fess. Pat. 231.

TARDE VENIT.—It came too late. A return by a sheriff to a writ received by him too late for execution.

TARDÉ VENIT, (when an attachment should be returned). 4 Paige (N. Y.) 363.

— (when a proper return to a writ of *scire facias*). 1 Watts (Pa.) 32.

TARE AND TRET.—The first word in the phrase signifies an allowance in merchandise made to a buyer for the weight of the box, bag, or cask wherein goods are packed; and the last is a consideration in the weight, for waste in emptying and reselling the goods, by dust, dirt, breaking, &c. Tare is distinguished into *real* tare, i. e. the actual weight of the package; *customary* tare, its supposed weight, according to the practice among merchants; *average* tare, the medium (deduced from weighing a few packages, and taking it as a standard for the whole.—*Wharton*.

TARIFF.—A cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandise, with the duties or customs to be paid for the same, as settled by authority, or agreed on between the several princes and States that hold commerce together.—*Encycl. Lond.*

TATH.—In the counties of Norfolk and Suffolk, the lords of manors anciently claimed the privilege of having their tenants' flocks or sheep brought at night upon their own domestic lands, there to be folded for the improvement of the ground, which liberty was called by the name of the "tath."—*Spel. Gloss.*

TAU.—A cross.—*Selden*.

TAURI LIBERI LIBERTAS.—A common bull, because he was free to all the tenants within such a manor, liberty, &c.

TAUTOLOGY.—Describing the same thing twice in one sentence in equivalent

terms; a fault in rhetoric; it differs from repetition or iteration, which is repeating the same sentence in the same or equivalent terms; the latter is *sometimes* either excusable or necessary in an argument or address; the former (tautology) never.—*Wharton*.

TAVERN.—An inn or hotel; more especially a house licensed to sell liquors in small quantities to be drank on the spot.—*Webster*.

TAVERN, (defined). 46 Mo. 593; 3 Harr. (N. J.) 485
 — (synonymous with "house of entertainment"). 7 Ga. 296, 308.
 — (synonymous with "inn" and "hotel"). 54 Barb. (N. Y.) 311.
 — (in an insurance policy). 3 Harr. (N. J.) 480.

TAVERN-KEEPER.—An inn-keeper (*q. v.*)

TAVERN-KEEPER, (who is). 5 Ohio 324.
 — (as equivalent to "housekeeper"). 2 Md. 310.
 — (distinguished from "retailer of wine"). Hard. 348.

TAX.—A rate or sum of money assessed on the person or property of a citizen, by government, for the use of the nation, State, or municipality.

TAX, (defined). 17 Wall. (U. S.) 322, 326; 20 *Id.* 655, 664; 16 Cal. 332; 20 *Id.* 318; 34 *Id.* 432, 454; 87 Ill. 385; 15 *Id.* 189; 27 *Id.* 62; 27 Iowa 28; 21 La. Ann. 51; 50 Mo. 155; 2 Dutch. (N. J.) 398; 6 Barb. (N. Y.) 215; 11 Johns. (N. Y.) 77; 12 Wend. (N. Y.) 391; 7 Ired. (N. C.) L. 55, 59; 3 Pittsb. (Pa.) 62; 3 Tex. App. 489, 493; Blackw. Tax. T. 1; Cooley Tax. 1.
 — (what is). 46 Cal. 553; 51 *Id.* 499; 42 Iowa 665; 6 Rich. (S. C.) 1.
 — (what is not). 26 Ark. 523; 27 Cal. 607, 618; 31 La. Ann. 381; 3 Dutch. (N. J.) 185; 4 Zab. (N. J.) 386; 6 Johns. (N. Y.) 92; 3 Wend. (N. Y.) 266; 14 *Id.* 89; 79 N. C. 263; 4 Am. Rep. 63; 23 *Id.* 472.
 — (distinguished from "assessment"). 36 Ind. 338, 341; 7 Vr. (N. J.) 478; 4 Hill (N. Y.) 76.
 — (distinguished from "excise"). 11 Allen (Mass.) 274.
 — (is not a debt). 20 Cal. 318; 15 Mass. 144, 147.
 — (not the subject of set-off). 3 Metc. (Mass.) 520.
 — (power to levy). 4 Pet. (U. S.) 514; 58 Me. 590, 596; 12 Mass. 252.
 — (in a lease). 115 Mass. 186.
 — (in act exempting soldiers from). 1 Serg. & R. (Pa.) 64.
 — (what property is not subject to). 4 Serg. & R. (Pa.) 354.

TAX, (on land of non-resident). 16 Mass. 214.
TAX, CLEAR OF ANY, (indorsed on a deed). 5 Mod. 369.

TAX-DEED.—A conveyance executed by the officer (sheriff, master, referee, &c.,) who conducts a sale of land for non-payment of taxes, to the purchaser at such sale. Its validity depends upon the regularity of the proceedings anterior to the sale, and of the sale itself.

TAX-DEED, (effect of). 29 Ill. 484; 42 Iowa 665.

TAX-PAYER.—Whoever is liable to pay taxes, by reason of holding taxable property.

TAX, PUBLIC, (what is not). 10 Serg. & R. (Pa.) 181.

TAX SALE.—A judicial sale of land for the non-payment of taxes assessed thereon. For the regulation of tax sales, consult the statutes of the several States.

TAX, STATE, (what is). 3 Harr. (N. J.) 71.
TAX, TOLL OR IMPOST, (what is not). 21 La. Ann. 51.
TAXABLE PROPERTY, (in charter of Buffalo). 15 N. Y. 451.

TAXATI.—Soldiers of a garrison or fleet, assigned to a certain station.—*Spel. Gloss.*

TAXATIO ECCLESIASTICA.—The valuation of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. This taxation was first made by Walter, Bishop of Norwich, delegated by the Pope to this office in 38 Hen. III. and hence called "*Taxatio Norwicensis*." It is also called "Pope Innocent's Valor."—*Wharton*.

TAXATION—TAXES.—

§ 1. In public law, taxation signifies the system of raising money for public purposes by compelling the payment by individuals of sums of money called "taxes."

§ 2. **Parliamentary—Local.**—Taxation is of two kinds. Some taxes are imposed on persons generally, without reference to locality, to raise money for the public expenses of the State; other taxes are imposed on persons residing, or owning or occupying property, within a certain district, to raise money for the public expenses of that district. Taxes of the first class are sometimes called "imperial," being required for the *imperium* or supreme

government; sometimes "parliamentary," because their amount is fixed by the legislature. Taxes of the second class are called "local," "parochial," "municipal," &c., to denote that they are assessed and levied by local authorities. More often, in England, they are called "rates," and the term "taxes" is confined to imperial taxes. (See RATES.) Tithes (*q. v.*) are in the nature of local taxes, but are not usually so classified.

§ 3. Imperial or parliamentary taxes include—customs; excise duties; stamp duties; land tax, and income tax. (See the various titles; see, *also*, CONSOLIDATED FUND.) As to "assessed taxes," see EXCISE.

§ 4. Of costs.—In procedure, taxation is the process of going through, and, if necessary, reducing, the bill of costs of an attorney or solicitor by the proper officer. Taxation is of two kinds, in England: taxation in an action, matter or other judicial proceeding, and taxation under the Attorneys and Solicitors' Act. 6 and 7 Vict. c. 73.

§ 5. In a cause, &c.—Taxation in a cause, &c., takes place where costs are awarded to a party and made payable either—(1) by his opponent; or (2) out of a trust fund or the estate of a deceased person, &c. In the former case, the taxation is voluntary, *i. e.* the person who is ordered to pay the costs is entitled to have them taxed, but he may pay them without taxation if he likes; in the latter case, the taxation is generally compulsory, *i. e.* the costs must be taxed for the protection of the persons interested in the fund or estate, unless they are all *sui juris* and dispense with taxation. Taxation of the latter kind appears to occur only in equitable and probate actions.

§ 6. Review of.—When a party has reason to complain of the manner in which the master (or other officer) has taxed the costs, he may carry in objections before the officer, showing the items objected to, and apply to the officer to review his taxation. If the objecting party is dissatisfied with the decision of the officer, he may apply to a judge at chambers for an order to review the taxation, and the judge then decides (subject to an appeal) whether the objection is well founded.

§ 7. In the English Chancery Division, when an interlocutory order directs the payment of costs by one party to another, the latter is entitled to have them taxed and paid at once. In the Queen's Bench Division, there is generally only one taxation of costs in an action, however many interlocutory applications there may have been; but this rule does not apply to orders of the Court of Appeal. (*Phillips v. Phillips*, 5 Q. B.

D. 60.) As to taxation between party and party, and between solicitor and client, see COSTS, p. 302 *n.*

§ 8. Under statute.—Taxation under the English Attorneys and Solicitors' Act is the remedy for a person who is dissatisfied with a bill of costs rendered to him by his solicitor, whether for services in an action, &c., or in non-contentious business, such as conveyancing. The general rule is that a client can only tax an unpaid bill within a year after it has been delivered, unless there are special circumstances, and that he cannot tax it after it has been paid, unless it was paid under pressure or under protest, &c., and in no case after a year from the payment. On the other hand, a solicitor cannot commence an action for the recovery of costs until a month after he has delivered to the client a signed bill, *i. e.* a bill signed by him or inclosed in or accompanied by a letter signed by him, and if the client applies for taxation the solicitor is restrained from commencing an action for his costs pending the taxation. As to taxation generally, both in causes and under the statute, see Dan. Ch. Pr. 1238, 1726; Arch. Pr. 120, 430. As to taxation of parliamentary costs, see Stats. 10 and 11 Vict. c. 69; 42 and 43 *Id.* 17; May Parl. Pr. 342. See, *also*, HIGHER AND LOWER SCALE.

TAXATION, (defined). 21 Minn. 526, 528; 3 Ohio St. 1.

— (what is not). 20 Wall. (U. S.) 655, 664; 40 Cal. 497, 514.

— (equivalent to "assessment"). 32 Ark. 31, 36.

— (exemption from). 116 Mass. 181, 189, 193.

— (should be equal and uniform). 1 Cal. 232, 253; 8 Bush (Ky.) 508.

— (power of, under constitution of Tennessee). 9 Heisk. (Tenn.) 340.

— (in constitution of Texas). 51 Tex. 302.

— (in a statute). 23 Minn. 460.
— (private property may be taken for public use by). 4 N. Y. 419.

TAXATION AND TAXED, (in State constitution). 28 Cal. 345.

TAXATION OF COSTS.—See TAXATION, §§ 4-8.

TAXED CART, (in statute, technical meaning). Wilberf. Stat. L. 125.

— (in statute regulating tolls). L. R. 7 Q. B. 235.

TAXERS.—Two officers yearly chosen in Cambridge, England, to see the true gauge of all the weights and measures.

TAXES, (distinguished from "subsidies" and "assessments"). 3 Salk. 340.

— (power to sell land for, will not authorize a sale for assessments). 4 Hill (N. Y.) 92.

— (synonymous with "levies"). 5 Serg. & R. (Pa.) 417.

— (exemption of church property from). 10 Am. Rep. 35.

TAXES, (exemption of a charitable corporation from). 11 Am. Rep. 412; 17 *Id.* 153

— (church property when liable for). 8 Am. Rep. 481.

— (in a covenant to pay). 10 Johns. (N. Y.) 97; 3 Wend. (N. Y.) 263, 266; 16 East 29; 2 Lev. 68; 12 Mod. 54; 1 Ry. & M. 246; 3 T. R. 377; 3 Com. Dig. 281.

— (in the constitution). 8 N. Y. 317.

— (in act exempting railroads from). 36 Conn. 255; 3 Harr. (N. J.) 11.

— (in a lease). 11 R. I. 381.

TAXES AND ASSESSMENTS, (in covenant by lessee). L. R. 6 C. P. 240.

— (in a statute). 8 T. R. 468.

TAXES AND OTHER PUBLIC DUES, (what are not). 2 Leigh (Va.) 178.

TAXES, CHARGES AND IMPOSITIONS, (in a will). 2 Atk. 542.

TAXES, CLEAR OF ALL, (in a covenant). Carth. 438; 1 Salk. 198.

TAXES, FREE FROM ALL, (in a covenant). 12 Mod. 166.

TAXES, FREE OF ALL, (in a lease). Carth. 135.

TAXES IN KIND, (what are). Cooley Tax. 12.

TAXES, PUBLIC, (defined). 46 N. Y. 506; 46 Vt. 773.

— (in a charter). 14 Am. Rep. 640.

TAXES, RATES, DUTIES, ASSESSMENTS AND IMPOSITIONS, (in a lease). 8 T. R. 605.

TAXING-MASTERS.—Officers of the English Supreme Court, who examine and allow or disallow items in bills of costs. See 1 Chit. Arch. Pr. (12 edit.) 507; Sm. Ch. Pr. 12, 62, 829; 2 Dan. Ch. Pr. (5 edit.) 1308.

TAXING OFFICER.—Each house of parliament has a taxing officer, whose duty it is to tax the costs incurred by the promoters or opponents of private bills. May Parl. Pr. 843. See **TAXATION**, § 4 *et seq.*

TAXT-WARD.—An annual payment made to a superior in Scotland, instead of the duties due to him under the tenure of wardholding. Abolished.

TEACHER, PUBLIC, (in the declaration of rights). 8 Mass. 265; 16 *Id.* 509.

TEAM, or **THEAME**.—A royalty or privilege granted, by royal charter, to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattles, &c. Glan. 1, 5, c. ii.

TEAM, (what constitutes). 11 N. Y. Leg. Obs. 223.

— (what is not). 11 N. Y. Leg. Obs. 248.

— (a single horse is). 15 Barb. (N. Y.) 568; 27 *Id.* 505.

— (in a statute). 41 Conn. 568, 577; 57 N. H. 27; 1 Duer (N. Y.) 606; 5 How. (N. Y.) Pr. 288; 6 *Id.* 18; 31 N. Y. 648.

TEAM-WORK, (what is). 49 Vt. 372.

TEAMSTER.—A wagoner who carries goods for hire.

TEAMSTER, (defined). 34 Cal. 302.

TECHNICAL.—Belonging, or peculiar to an art or profession. Technical terms are frequently called in the books, "words of art" (*verba* or *vocabula artis*).—*Burrill*.

TECHNICAL TOTAL LOSS, (of a vessel, what is). 20 Am. Dec. 763.

TEDING-PENNY, TETHING-PENNY, TITHING-PENNY.—A small duty or payment to the sheriff from each tithing, towards the charge of keeping courts, &c, from which some of the religious were exempted by royal charter.

TEIND-MASTERS.—Those entitled to tithes.

TEINDS.—Tithes.

TEINLAND.—Thaneland (*q. v.*)

TELEGRAM, (message by telephone is). 6 Q. B. D. 244.

TELEGRAPH, (defined). 6 Q. B. D. 254.

TELEGRAPHIÆ.—Written evidence of things past.—*Blount*.

TELLER.—One who numbers; a numberer; a clerk in a bank who receives or pays out money; one who counts votes; four officers in the Exchequer, whose offices were abolished by 4 and 5 Will. IV. c. 15.

TELLERS IN PARLIAMENT.—In the language of parliament, the "tellers" are the members of the house selected to count the members when a division takes place. In the House of Lords a division is effected by the "non-contents" remaining within the bar, and the "contents" going below it, a teller being appointed for each party. In the commons the "ayes" go into the lobby at one end of the house, and the "noes" into the lobby at the other end, the house itself being perfectly empty, and two tellers being appointed for each party. May Parl. Pr.

TELLIGRAPHUM.—An Anglo-Saxon charter of land. 1 Reeves Hist. Eng. Law c. i., p. 10.

TELLWORD.—That labor which a tenant was bound to do for his lord, for a certain number of days.

TELONIUM.—See **THELONIUM**.

TEMENTALE, or TENEMENTALE.—A tax of two shillings upon every ploughland; a decennary (*q. v.*)

TEMPLARS.—A religious order of knight-hood, instituted about the year 1119, and so called because the members dwelt in a part of the temple of Jerusalem, and not far from the sepulchre of our Lord. They entertained Christian strangers and pilgrims charitably; and their profession was at first to defend travelers from highwaymen and robbers. The order was suppressed A. D. 1307, and their substance given partly to the knights of St. John of Jerusalem and partly to other religious orders.—*Brown.*

TEMPLE.—Two English Inns of Court, thus called, because anciently the dwelling place of the Knights Templars. On the suppression of the order, they were purchased by some professors of the common law, and converted into *hospitia* or Inns of Court. They are called the "Inner" and "Middle Temple," in relation to Essex House, which was also a part of the house of the Templars, and called the "Outer Temple," because situated without Temple-bar.—*Encycl. Lond.*

TEMPORAL ESTATE, (in a will). 8 Ves. 617; 3 Wils. 418.

TEMPORAL ESTATE AND EFFECTS, (in a will). 3 Brod. & B. 85, 91.

TEMPORAL GOODS, (in a will). 3 Rand. (Va.) 280.

TEMPORAL LORDS.—The peers of England; the bishops are not in strictness held to be peers, but merely lords of parliament. 2 Steph. Com. (7 edit.) 330, 345.

TEMPORALIS.—In the civil law, temporary; limited to a certain time.

TEMPORALIS ACTIO.—An action which could only be brought within a certain period.

TEMPORALIS EXCEPTIO.—A temporary exception which barred an action for a time only.

TEMPORALITIES of a bishop are all such things as he has by livery from the crown, as castles, manors, lands, tenements, tithes, &c. (Phillim. Ecc. L. 78.) During a vacancy of a bishopric the crown has the custody of the temporalities, and (nominally) the rents and profits thereof. 2 Steph. Com. 530. *See* GUARDIAN OF THE SPIRITUALITIES.

TEMPORALTY.—The laity; secular people.

TEMPORARY.—That which is to last for a limited time only.

TEMPORARY, (of a sidewalk). 6 Cush. (Mass.) 224.

TEMPORARY LOAN, (affected by city for current expenses). 87 Ill. 385.

TEMPORARY RESIDENCE, (in a rule of court). 3 East 155.

TEMPTATIO, or TENTATIO.—A trial or proof.

TEMPUS PESSONIS.—Mast-time in the forest, which is about Michaelmas to St. Martin's Day, November 11th.—*Cowell.*

TEMPUS SEMESTRE.—Half a year, and not six lunar months. West. II. c. 5.

TENA.—A coif worn by ecclesiastics.

TENANCY is the relation of a tenant to the land which he holds. Hence it signifies (1) the estate of a tenant, as in the expressions "joint tenancy," "tenancy in common;" (2) the term or interest of a tenant for years or at will, as when we say that a lessee must remove his fixtures during his tenancy. (*See* FIXTURES, § 3.) In old writers, "tenancy" sometimes denotes the land itself, "the tenant may plead that the tenancy is *extra feudum* of him." (Co. Litt. 1b.) This use of the word is obsolete. *See* TENANT; TENURE.

TENANCY AT SUFFERANCE, (defined). 12 Barb. (N. Y.) 481.

TENANCY AT WILL, (defined). 57 Ala. 304.

TENANCY IN COMMON, in the strict sense of the term, is where two or more persons are entitled to land in such a manner that they have an undivided possession but several freeholds, *i. e.* no one of them is entitled to the exclusive possession of any particular part of the land, each being entitled to occupy the whole in common with the others, or to receive his share of the rents and profits; and on the death of any one of them his share passes, not to the survivors, but to his heir or devisee, who then becomes tenant in common with the survivors. Tenants in common may acquire land by several titles, or in several rights, or at different times, and hence the only characteristic common to joint tenants and tenants in common is that of undivided possession. Litt. § 292; Co. Litt. 188b; Wms. Real Prop. 138; White & T. Lead. Cas. 160 *et seq.*

§ 2. Persons may also be tenants in common of chattels real or personal, so that on the death of one of them his share passes to his personal representatives. Litt. § 319 *et seq.* *See* COPARCENARY; ES-

TATE; JOINT TENANCY; PARTITION; PRESCRIPTION, § 3; SEVERALTY; UNITY OF POSSESSION.

TENANCY IN COMMON, (what words create in a will). 15 Wend. (N. Y.) 615; 5 Binn. (Pa.) 16, 18; 2 Watts (Pa.) 185; 8 Com. Dig. 447.

TENANCY, JOINT.—See JOINT TENANCY.

TENANT.—

§ 1. Strictly speaking, a tenant is a person who holds land; but the term is also applied by analogy to personalty: thus we speak of a person being tenant for life or tenant in common of stock.

§ 2. In its proper use, "tenant" connotes either estate or tenure. Every person who has an estate in land is a tenant; thus, a person who has an estate in fee-simple is a tenant in fee-simple, and a person who has an estate in joint tenancy is a joint tenant (see the following titles). Again, every tenant holds the land by tenure, "because all the lands and tenements in England in the hands of subjects are holden mediately or immediately of the king. . . . And therefore the king in this sense cannot be said to be a tenant, because he hath no superior but God Almighty." (Co. Litt. 1a.) In this sense "tenant" is opposed to "lord" (*q. v.*, and see TENURE).

§ 3. In its more popular sense, "tenant" signifies a lessee of land or buildings for occupation, agriculture, &c. See LANDLORD AND TENANT; LEASE; TERM, § 3.

TENANT, (defined). 12 N. Y. 519, 527.

(does not necessarily imply a landlord).

2 Tyler (Vt.) 301.

(in Van Ness ordinance). 37 Cal. 366, 367.

(in act respecting distress for rent). 2 Hill (N. Y.) 447.

TENANT A VOLUNTE.—A tenant at will.

TENANT AT SUFFERANCE is a person who has originally come into possession of land by a lawful title, and holds such possession after his title has determined. "A tenant at sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth in possession and wrongfully holdeth over. As [where] tenant *pur terme d'auter vie* continueth in possession after the decease of *cest-vi que vie*, or [where] tenant for years

holdeth over his terme." (Co. Litt. 57b.) A tenancy at sufferance is a chattel interest. See CHATTEL; ESTATE, § 5.

§ 2. At common law, a tenant at sufferance is not a trespasser until the lessor or person entitled to the possession enters on the land, because his continuance in possession is imputed to the laches of the lessor in not entering at once (Co. Litt. 57b); but this doctrine has been modified by statute. See HOLDING OVER.

TENANT AT SUFFERANCE, (defined). 39 Mich. 384; 6 Barb. (N. Y.) 116, 130.

(who is). 20 Johns. (N. Y.) 301.

TENANT AT WILL "is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called 'tenant at will,' because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him." (Litt. § 68.) Similarly the tenant may leave when he likes. He has a right to emblements (*q. v.*), and to remove his goods, &c., if he is turned out by the landlord. He is liable for voluntary waste.

§ 2. A tenancy at will may be created by parol (if followed by entry) or by deed. It may be determined not only by the will of either party, but also if the tenant should assign his estate to another, or if he should commit waste. (Co. Litt. 57a.) As this kind of letting is very inconvenient to both parties, it is scarcely ever adopted; and in construction of law, a lease at an annual rent, made generally without expressly stating it to be at will, and without limiting any certain period, is not a lease at will, but a lease from year to year. (Wms. Real Prop. 373; Woodf. Land. & T. 208. See TENANCY FROM YEAR TO YEAR.) A tenancy at will is a chattel interest in land. Wms. Real Prop. 390. See CHATTEL; ESTATE, § 5.

TENANT BY COPY OF COURT ROLL (shortly, "tenant by copy") is the old-fashioned name for a copyholder. Litt. § 73. See COPYHOLDS.

TENANT BY THE CURTESY.—See CURTESY.

TENANT BY THE CURTESY, (defined). 2 Bl. Com. 126.

TENANT FOR LIFE is a person who is entitled to land or tenements either for the term of his own life or for that of another person. In the latter case he is called "tenant *pur autre vie*," and the person for whose life the land is holden is called the "*cestui que vie*." Litt. § 56; Co. Litt. 41b; Wms. Real Prop. 16 *et seq.* See OCCUPANCY, § 3 *et seq.*

§ 2. An estate for life may be created by deed of grant or feoffment, or by will. At the present day estates for life are principally created by settlements and wills; as where property is given to a man for his life, and after his death to his children. See ASSIGNMENT; HEIR, § 9; SURRENDER.

§ 3. An ordinary tenant for life is not allowed to commit waste, but if his estate is given to him without impeachment of waste he may cut timber and open mines, &c., so long as he does not commit equitable waste. (Wms. Real Prop. 25. See WASTE.) As to leases by tenants for life, see SETTLED ESTATES ACT. See, also, EMBLEMENTS; IMPROVEMENT OF LAND ACTS.

§ 4. Of chattels.—Where a person has a life interest in a chattel (*e. g.* in a sum of stock), he is sometimes called a "tenant for life."

TENANT FOR YEARS.—

§ 1. "Tenant for terme of yeares is where a man letteth lands or tenements to another for terme of certaine yeares, after the number of yeares that is accorded between the lessor and the lessee. And when the lessee entreth by force of the lease, then is he tenant for terme of yeares; and if the lessor in such case reserve to him a yearly rent upon such lease, he may chuse for to distraine for the rent in the tenements letten, or else he may have an action of debt for the arrerages against the lessee." (Litt. § 58.) A tenant for years is liable for waste (*q. v.*) *Id.* § 67.

§ 2. The expression "tenant for years" is not much used at the present day. Where a term is created by an ordinary lease, the tenant is called "lessee." (As to his rights and liabilities, see FIXTURES; INTERESSE TERMINI; LANDLORD AND TENANT; LEASE.) If the term is one of those long terms created by settlements and the like, under which no rent, covenants, &c.,

are reserved, the tenant is called a "trustee of the term." See TERM, § 3.

TENANT FROM YEAR TO YEAR is a tenant of land whose tenancy can only be determined by a notice to quit expiring at that period of the year at which it commenced. In the case of ordinary tenancies from year to year a six months' notice to quit is generally required. (Wms. Real Prop. 391.) Thus, if a house is held on a tenancy from year to year, beginning at midsummer, and either the landlord or the tenant wishes to determine it, he must, at or before Christmas, give notice to the other to quit at midsummer following.

§ 2. A tenancy from year to year of land subject to the provisions of the English Agricultural Holdings Act, 1875, (*q. v.*) requires a year's notice to quit. Stat. 38 and 39 Vict. c. 92; Woodf. Land. & T. 302.

§ 3. Whenever one person holds land of another, and there is no express limitation or agreement as to the term for which it is to be held, then, if the rent is payable with reference to divisions of the year (*e. g.* quarterly), the tenancy is deemed to be a tenancy from year to year. Woodf. Land. & T. lxvi. 201, 300. See TENANT AT WILL.

TENANT IN DOWER.—A widow after dower assigned.

TENANT IN FEE.—See FEE.

TENANT IN POSSESSION, (in section 236 of the proctors' act). 13 Cal. 514.

TENANT IN TAIL.—See ESTATE TAIL.

TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT "is where tenements are given to a man and his wife in especial tail. If one of them die without issue, the survivor is tenant in tail after possibility of issue extinct" (Litt. § 32), because there is no possibility of issue being born capable of inheriting the estate. And so if tenements are given to a man and the heirs of his body by his present wife, and the wife dies without issue, then the husband is tenant in tail after possibility of issue extinct (*Id.* 33), because no issue by another wife could inherit the estate tail. Such a tenant is, in effect, only a tenant for his own life, for he cannot bar the entail (3 and 4 Will. IV. c. 74, § 18); and on his death the estate will pass to the person next entitled in remainder or reversion. The tenancy has, however, some of the privileges of an estate tail, *e. g.* the tenant is not punishable for waste. Co. Litt. 27b; Litt. § 34. See ESTATE TAIL.

TENANT IN TAIL EX PROVISIONE VIRI.—A woman was said to be tenant in tail *ex provisione viri* where she had an estate tail, either alone or jointly with her husband, in any lands or hereditaments inherited or purchased by her husband, or given to the husband and herself by any of the ancestors of the husband. Such a tenant in tail could not bar the entail after the death of the husband except with the consent of the issue in tail. (Stats. 11 Hen. VII. c. 20; 32 Hen. VIII. c. 33; Co. Litt. 326 b.) This kind of estate no longer exists. 3 and 4 Will. IV. c. 74, § 16; Shelf. R. P. Stat. 322.

TENANT PER AVILLE.—See PARAVAIL.

TENANT TO THE PRÆCIPE.—Before the English Fines and Recoveries Act, if land was conveyed to a person for life with remainder to another in tail, the tenant in tail in remainder was unable to bar the entail without the concurrence of the tenant for life, because a common recovery could only be suffered by the person seised of the land. In such a case, if the tenant for life wished to concur in barring the entail, he usually conveyed his life estate to some other person in order that the *præcipe* in the recovery might be issued against the latter, who was therefore called the "tenant to the *præcipe*." Wms. Seis. 169. See PRÆCIPE, § 3; RECOVERY, § 2.

TENANT-RIGHT.—

§ 1. **Agricultural lands.**—In agricultural districts, in England, tenant-right signifies the right of a tenant to claim a beneficial interest in the land, notwithstanding the expiration of his lease. In England, different usages have long prevailed in different counties and districts, conferring on an outgoing agricultural tenant a claim to remuneration for various operations of husbandry, from reaping the advantage of which he is prevented by the termination of his tenancy. Thus, by what is called the "Lincolnshire tenant-right custom," if a tenant spreads chalk or bones upon the land, the money expended in this operation is divided by a certain number of years (three to seven); and if the tenant quits before the expiration of that period, he receives from the landlord a part of his outlay, proportionate to the number of years of the period remaining unexpired. Rep. on Agric. Customs 16 *et seq.*; Cooke's Agric. Holdings Act, 6.

§ 2. A kind of statutory tenant-right has been created in some cases by the Agricultural Holdings Act, 1875, (q. v.)

§ 3. **Tenant-right estates** are a peculiar kind of customary freeholds, found in the north of England. Although they appear to have many qualities and incidents which do not properly and ordinarily belong to villenage or copyhold tenure; and also to have originally had some which savoured more of military tenure by knight-service; and to want some of the characteristic qualities and circumstances which belong to copyhold tenure (namely, in not being holden at the will of the lord and in not being alienable by surrender and admittance). It seems to be settled that these customary tenant-

right estates are not freehold, but copyhold. Doe v. Huntingdon, 4 East 271; cited by Eit. Copyh. 6. See CUSTOMARY FREEHOLDS.

TENANTABLE REPAIR.—Such a repair as will render a house fit for present habitation. See Woodf. Land. & T. (10 edit.) 480 *et seq.*

TENANTS, (distinguished from "occupiers"). 2 Saund. 9 a, n. (9).

TENANTS BY THE VERGE "are in the same nature as tenants by copy of court roll [*i. e.* copyholders]. But the reason why they be called 'tenants by the verge,' is, for that when they will surrender their tenements into the hands of their lord to the use of another, they shall have a little rod (by the custome) in their hand, the which they shall deliver to the steward or to the bailife . . . and the steward or bailife according to the custome shall deliver to him that taketh the land the same rod, or another rod, in the name of seisin; and for this cause they are called 'tenants by the verge,' but they have no other evidence [title deed] but by copy of court roll." Litt. § 78; Co. Litt. 61 a. See SURRENDER, § 4.

TENANTS IN COMMON, (defined). 5 Conn. 365.

— (in a will). 3 Binn. (Pa.) 139, 162; 13 Serg. & R. (Pa.) 65.

TENDE.—To tender or offer.—O. N. B. 123.

TENDER.—

§ 1. A tender is an offer by a debtor to his creditor of the amount of the debt. The offer must be in lawful money, which must be actually produced to the creditor, unless by words or acts he waives production; therefore, a mere statement by the debtor that he has the money in his possession ready for payment is not sufficient, even if the creditor says he will not receive it. (Leake Cont. (2 edit.) 862; Thomas v. Evans, 10 East 101.) But if the debtor brings the money in purses or bags, it is not necessary to show or count it, because that is "the usual manner to carry money in, and then it is the part of the party that is to receive it to put it out and tell it." (Co. Litt. 208 a.) The offer must also be unconditional. In England, if the debtor requires a receipt, he must prepare and stamp it, and ask the creditor to sign it, and if the latter refuses to do so he is liable to a penalty. (Leake Cont. 866; Laing v. Meader, 1 Car. & P. 257.) The giving of a receipt cannot be insisted on in America.

§ 2. **Plea of tender.**—If a debtor has made a tender, and continues ready to

pay, he is exonerated from liability for the non-payment, but the debt is not discharged. Therefore, if he is sued he should plead the tender, and also allege that he always was and still is ready to pay the debt, and he must pay the money into court; if he can maintain the defense of tender and readiness to pay, he will be entitled to judgment for his costs. *Leake Cont.* 859.

§ 3. **Legal tender.**—Money is said to be legal tender when a creditor cannot refuse to accept it in payment of a debt.

§ 4. **Goods.**—The term "tender" is also applied to goods when they are offered to a person in performance of a contract for their delivery.

TENDER, (defined). 12 Barb. (N. Y.) 137, 144; Co. Litt. 2a.

— (what constitutes). 5 Mass. 67; 10 East 101; 4 Esp. 68; 3 T. R. 683, 684; 3 Bl. Com. 304 n.

— (what is not). *Coxe* (N. J.) 45, 174; 20 Wend. (N. Y.) 47; 2 Dowl. & Ry. 305.

— (in case of mutual promises). 87 Ill. 438.

— (avowment of, supported by proof of a waiver of). 9 N. Y. 525.

— (in pleading). 26 Conn. 119; 1 Harr. (N. J.) 273; 2 Hill (N. Y.) 533; 12 Wend. (N. Y.) 393; 14 *Id.* 221; 15 *Id.* 637; 23 *Id.* 342.

TENDER OF AMENDS.—An offer by a person who has been guilty of any wrong or breach of contract to pay a sum of money by way of amends. If a defendant in an action make tender of amends, and the plaintiff decline to accept it, the defendant may pay the money into court, and plead the payment into court as a satisfaction of the plaintiff's claim.—*Mozley & W.*

TENDERING ISSUE.—Under the common law pleadings where the defendant traversed or denied some allegation of fact put forward by the plaintiff in his declaration or other pleading, a question was at once raised between the parties as to the existence or non-existence, truth or falsehood, of the fact to which the traverse was directed. A question being thus raised, or, in other words, the parties having arrived at a specific point, or matter affirmed on the one side and denied on the other, the defendant (as the party traversing) was obliged to offer to refer this question to the proper mode of trial, which he did by annexing to the traverse an appropriate formula indicative of such offer, and in so doing he was said to "tender issue." Where the question for trial was one of fact, the formula was simply as follows: "And of this the defendant puts himself upon the country," &c., meaning that, with regard to the question in issue, he threw himself upon a jury of his countrymen. However, other issues besides those of fact were frequently tendered. (*Steph. Pl.* (5 edit.) 59, 60).—*Brown.*

TENEMENT.—NORMAN-FRENCH: *tenement* (Britt 163), from Latin *tenere*, to hold.

§ 1. Tenement signifies a thing which is the subject of tenure (*q. v.*) The term "includeth not only all corporate inheritances (& *e. corporeal hereditaments*) which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning, or annexed to, or exercisable within the same, though they lie not in tenure . . . as rents, estovers, commons, or other profits whatsoever granted out of land; or uses, offices, dignities, which concerne lands or certain places . . . because all these savour of the realtie." (Co. Litt. 6a, 19b; Perkins § 114.) But a personal hereditament, such as an annuity granted to a man and his heirs, is not a tenement. See ESTATE TAIL, § 5; HEREDITAMENT; LAND.

§ 2. In popular language, "tenement" means a house. See MESSUAGE.

As to "dominant" and "servient" tenements, see EASEMENT.

TENEMENT, (defined). 5 Conn. 518; 6 Blackf. (Ind.) 335; 28 Barb. (N. Y.) 336, 338; 13 N. Y. 151, 159; 5 Barn. & Ad. 709; 2 Bl. Com. 16; 1 Chit. Gen. Pr. 151; Co. Litt. 6a.

— (what is). 14 Abb. (N. Y.) Pr. 372; 9 Johns. (N. Y.) 298; 1 Johns. (N. Y.) Ch. 145; 1 T. R. 358; 3 *Id.* 772, 775.

— (what is not). 1 East 523.

— (synonymous with "building"). 112 Mass. 278.

— (synonymous with "town"). Burr. 629.

— (includes a "rectory"). Com. 265.

— (not equivalent to "hereditament"). 8 T. R. 503.

— (is too uncertain for a fine). 1 Cro. 116.

— (occupier of, who is not). 2 Barn. & C. 226.

— (parcel of, what is not). 1 Barn. & Ad. 161, 165.

— (taking of, what is not). 2 East 189.

— (in a deed). Cro. Jac. 175.

— (in a grant). L. R. 6 H. L. 223; 4 Com. Dig. 540.

— (in an indictment for the illegal sale of liquors). 2 Allen (Mass.) 510; 11 Gray (Mass.) 454, 456.

— (in a statute). 35 Me. 339; 104 Mass. 95, 104; 17 Pick. (Mass.) 103; L. R. 1 C. P. 133; 7 *Id.* 212.

— (in a will). 4 Bing. 294; 1 East 459.

TENEMENT BLOCK, (as used in insurance policy). 124 Mass. 126.

TENEMENT HOUSE, (defined). 54 How. (N. Y.) Pr. 338.

— (what is not). 23 Hun (N. Y.) 678 n.

TENEMENTARY LAND.—The outland of manors, granted to tenants by the Saxon

thanes, under arbitrary rents and services.—*Spel. Gloss.*

TENEMENTIS LEG-ATIS.—An ancient writ, lying to the city of London, or any other corporation, (where the old custom was that men might devise by will lands and tenements, as well as goods and chattels,) for the hearing and determining any controversy touching the same.—*Reg. Orig.* 244.

TENEMENTS, (includes what). 10 Paige (N. Y.) 140, 156.

—— (tithes are). 1 Str. 100.

—— (in justice's act). 6 Blackf. (Ind.) 335.

—— (in a will). 10 Wheat. (U. S.) 236, 238; 1 Myl. & K. 571.

TENEMENTS, ALL AND WHATSOEVER, HE BATH, (in an agreement). 2 Taunt. 198.

TENEMENTS AND HEREDITAMENTS, (include an advowson). 3 Atk. 460.

TENENDAS.—That clause of a charter by which the particular tenure is expressed.

TENENDUM.—To be held. In a deed of conveyance of land, the *tenendum* is the clause which formerly indicated the tenure by which the grantee was to hold the land of the grantor—"tenendum de me et hæredibus meis sibi et hæredibus suis, per servitium," &c. When the statute *Quia Emptores* abolished subinfeudation, the clause was altered to indicate that the grantee was to hold of the superior lords—"tenendum de capitalibus dominis"—but now it simply says that the land is to be held by the grantee, without mentioning of whom. Shep. Touch. 79; Wms. Seis. 9. See **HABENDUM**; **QUIA EMPTORES**; **TENURE**; **TO HAVE AND TO HOLD**.

TENENS.—A tenant; the defendant in a real action.

TENENTIBUS IN ASSISA NON ONERANDIS.—A writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assize for damages, if the disseisor had wherewith to satisfy them.—*Reg. Orig.* 214.

TENHEDED, or TIENHEOFED.—A dean.—*Cowell.*

TENMENTALE, or TENMANTALE.—The number of ten men, which number, in the time of the Saxons, was called a "decenary;" and ten decenaries made what we call a "hundred." Also, a duty or tribute paid to the crown, consisting of two shillings for each ploughland.—*Encycl. Lond.*

TENNE.—An heraldic term meaning tawny, orange, or brusk; orange color. In engravings it should be represented by lines in bend sinister crossed by others barways. Herald who blazon

by the names of the heavenly bodies, call it *dragon's head*, and those who employ jewels, *jacinth*. It is one of the colors called "stain-and."—*Wharton.*

TENOR.—

The tenor of a document is its purport and effect, as opposed to the exact words of it. Thus, on a writ of certiorari (*q. v.*) it is sometimes sufficient to certify the tenor of the record, while in other cases the record itself must be certified. Gilb. Exec. 143.

As to an executor according to the tenor of the will, see **EXECUTOR**, § 3.

Tenor est qui legem dat feudo (Craig. Jus. Feud. (3 edit.) 66): It is the tenor of the feudal grant which regulates its effect and extent.

TENOR, (defined). 1 Harr. (Del.) 466; Leach C. C. 660; 1 Ld. Raym. 414, 415; 12 Mod. 218; 1 Salk. 324; 2 Id. 417, 660; 3 Id. 224, 225; 1 Saund. 121 n.; 1 Chit. Crim. L. 234.

—— (distinguished from "purport"). 5 Blackf. (Ind.) 458; Leach C. C. 660; 2 Wils. 151.

—— (imports an exact copy). 5 Blackf. (Ind.) 458; 1 Cush. (Mass.) 46; 5 Wend. (N. Y.) 271; Burr. 2571.

—— (in a declaration for libel). 3 Barn. & Ald. 503, 506.

—— (in an indictment for forgery). 1 Mass. 203.

—— (in an indictment for libel). 10 Serg. & R. (Pa.) 173, 175; Carth. 407; 1 Ld. Raym. 414; 11 Mod. 96; 12 Id. 218; 2 Salk. 417; Arch. Cr. Pl. 916.

—— (requires an exact copy). 5 Wend. (N. Y.) 271, 273; 3 Barn. & Ald. 503.

—— (in a declaration for slander). 3 Mod. 71.

TENOR FOLLOWING, (in an information for libel). 11 Mod. 78, 84.

—— (in an indictment). 1 Chit. Crim. L. 233; Stark. Cr. Pl. 109; 3 Stark. Ev. 1587.

TENORE INDICTAMENTI MITTENDO.—A writ whereby the record of an indictment, and the process thereupon was called out of another court into the Queen's Bench.—*Reg. Orig.* 69.

TENORE PRÆSENTIUM.—By the tenor of these presents, i. e. the matter contained therein, or rather the intent and meaning thereof.—*Cowell.*

TENSERLÆ.—A sort of ancient tax or military contribution.

TENTATES PANIS.—The essay or assay of bread.—*Blount.*

TENTERDEN'S ACT is the Stat. 9 Geo. IV. c. 14. It is a supplement to the Statute of Frauds (*q. v.*) and requires the following promises and engagements to be in writing: (1) An

acknowledgment of a debt barred by the Statute of Limitations; the act further provides that an acknowledgment by one joint contractor shall not affect the others (see **ACKNOWLEDGMENT**, § 3; **LIMITATION**, § 8); (2) a promise to pay a debt incurred, or a ratification of a contract made during infancy (see **INFANT**); (3) a representation as to a person's character, ability, &c., made to enable him to obtain money or goods upon credit (the words of the statute have been misplaced, it reads "obtain credit, money or goods upon." See *Wms. Pers. Prop.* 106); (4) executory contracts for the sale of goods, as to which see **STATUTE OF FRAUDS**. *Wms. Pers. Prop.* 104 *et seq.*

TENTHS are the tenth part of the annual profit of an ecclesiastical benefice according to the valuation contained in the *valor beneficiorum* or king's books, compiled in Henry VIII's reign. 2 Steph. Com. 533. As to the origin and history of tenths, see **FIRST FRUITS**.

§ 2. These ecclesiastical tenths must not be confounded with the tax consisting of one-tenth of every man's whole personal property, formerly levied by the crown under the name of tenths. *Id.* 554.

Tenura est pactio contra communem feudi naturam ac rationem, in contractu interposita (Wright Ten. 21): Tenure is a compact contrary to the common nature and reason of the fee, put into a contract.

TENURE.—**NORMAN FRENCH**: *tenure*; from Latin, *tenere*, to hold. (Britt 162b; Co. Litt 1a) As to the origin of tenures, see *Maine Early Inst.* 119 *et seq.*

§ 1. **Offices, &c.**—Tenure in its general sense is a mode of holding or occupying. Thus, we speak of the tenure of an office, meaning the manner in which it is held, especially with regard to time, (tenure for life, tenure during good behavior,) and of tenure of land in the sense of occupation or tenancy, especially with reference to cultivation and questions of political economy, *e. g.* tenure by peasant proprietors, cottiers, &c. J. S. Mill Pol. Ec. bk. ii., ch. 9; the Cobden Club Essays on the Tenure of Land; Reports by Consuls on Tenures.

§ 2. **Land**.—In its more technical sense, tenuresignifies the mode in which all land is theoretically owned and occupied. The English rule is that no person except the queen can be the absolute owner of land in England, because all lands in the hands of subjects are held of some superior, and mediately or immediately of the crown; *i. e.* every person who is possessed of land is theoretically merely a tenant and owes obligations in respect of it either to the crown or to an intermediate lord. The

manner of his possession is called "tenure," and the extent of his interest is called an "estate" (*q v*) The rule is a relic of the feudal system, and can only be understood with reference to it (Wright Ten. *passim*); in practice it has but little effect except in respect of manors and copyhold land, an ordinary tenant in fee-simple of freehold land being to all intents and purposes absolute owner. See **ALLODIUM**; **COPYHOLD**; **ESCHEAT**; **FEALTY**; **FEUDAL SYSTEM**; **HOMAGE**; **LORD**; **MANOR**; **SERVICE**; **TENANT**; **TENEMENT**.

§ 3. **Perfect**.—In **capite**; **mesne**.—With reference to the relation between the lord and the tenant, a tenure is either perfect or imperfect. A perfect tenure is where one person holds land of another, or of the crown, in fee-simple, and this is accordingly subdivided into (1) tenure *in capite* or in chief, which is the tenure existing between the crown and those who hold land of it directly, (2 *Bl. Com.* 60. As to the proper meaning of the expression, see **IN CAPITE**); and (2) **mesne** tenure, which is where one subject holds land of another. See **MESNE**.

§ 4. **In gross**.—When land is held of a private person merely by reason of his having the seignory of that particular land, the tenure is technically called a "tenure in gross," as opposed to the case of land being held of a person in his capacity of owner of a manor, county palatine or the like. Co. Litt. 108a.

§ 5. **Imperfect**.—Imperfect tenure is that which exists between a tenant of land and a person to whom he has granted a smaller estate than his own, as where a tenant in fee-simple creates an estate in tail or for years.

§ 6. An imperfect tenure may be created by any one at the present day, while a perfect tenure can now only be created by the crown. (Co. Copyh. 43. See **SUBINFEUDATION**.) With reference to the services to which they give rise, tenures are of various kinds. 2 *Bl. Com.* 60; 1 Steph. Com. 186. See **SERVICE**, § 1.

§ 7. **Lay—Free—Base**.—Temporal or lay tenures are those by which land is or used to be held by secular persons. They are of two kinds according as their services were originally free or base: (1) To the former class (frank or freehold tenure) belong (a) knight's service with its varieties (grand serjeanty, escuage, castle ward and cornage, which are commonly called "feudal tenures par excellence," and have all been abolished by being converted into common socage); and (b) free socage with its varieties (petty serjeanty, burgage tenure, borough-English and gavelkind). (2) Base or villein tenures are (a) pure villenage, which no longer exists, except in the form of copyhold and customary freehold tenures; and (b) the obsolete privileged villenage or villein socage, from which is derived tenure in ancient demesne. See the various titles; see, also, **TENANT-RIGHT**, § 3.

§ 8. **Customary**.—Copyhold, ancient demesne and customary freehold are sometimes called "customary tenures," because they depend

on local custom, and not on the general law. (Elt. Copyh. 7.) There are sometimes customs incident to the tenure of a freehold estate in fee-simple, but this does not make the tenure a customary one. Wms. Seis. 11; Blount Ten. *passim*.

§ 9. Ecclesiastical or spiritual tenures are: tenure in frankalmoin, and tenure by divine service (*q. v.*) Co. Litt. 95 a. As to tenure by priority and posteriority, *see* 1 Co. 102b, n.

TENURE, (in act relative to commissioners).

9 Wend. (N. Y.) 58.

— (in a deed). 44 N. Y. 353, 362.

— (devise of lands in). 1 W. Bl. 255.

TENURE BY DIVINE SERVICE is where an ecclesiastical corporation, sole or aggregate, holds land by a certain divine service, as to say prayers on a certain day in every year, "or to distribute in alms to an hundred poore men an hundred pence at such a day." (Litt. § 137.) It was originally called "tenure in alms," as distinguished from tenure in free alms (frankalmoin). (Britt. 164b.) This tenure differs from frankalmoin in the service being certain, in consequence of which the lord may distrain if the service is not performed. Fealty is also due by the tenant. Co. Litt. 96b. *See* FRANKALMOIGN; SERVICE, § 2; TENURE.

TERCE.—In the Scotch law, thirds; dower.

TERCER.—In the Scotch law, a widow in possession of the third part of her husband's land as her legal jointure.

TERM.—

§ 1. **Term of years.**—In the law of real property, a term of years is where a man lets lands or tenements to another for a certain number of years (Litt. § 58), as in the case of an ordinary lease for seven years; the word "term" not only signifies the limit of time, but also the estate and interest that pass for that time, so that if a lease is surrendered before the expiration of the time, the term is at an end. (Co. Litt. 45b.) A tenant for term of years is called in the old books a "termor." Litt. § 60.

§ 2. A term is personal property (*see* CHATELS; ESTATE, § 5; SURVIVORSHIP), except in the respects mentioned in the title LEASEHOLDS.

§ 3. **"Term," and "lease."**—In practice, the word "term" is seldom applied to a term of years granted for the purpose of occupation by the termor, such a term being described as a lease (*q. v.*), (*see* Belaney v. Belaney, L. R. 2 Ch. 138,) while "term" generally signifies a long term of

years granted, not for the purpose of occupation by the grantee, but as security for the performance of an obligation, such as the payment of money. (Wms. Real Prop. 412.) For this purpose it is often more convenient to limit a long term to the person in whose favor the obligation is created, and to allow the ownership of the property, subject to the term, to remain in the person entitled to the enjoyment of it, than to transfer the whole ownership as security, as in the case of a mortgage (*q. v.*) Thus, in England, when land is settled on the marriage of the owner, it is usual to provide for the payment of a jointure to the wife, and of portions for the younger children, without interfering with the possession of the estate by the husband. This is done by vesting long terms of years (from 99 to 1000) in trustees, upon trust, out of the rents and profits of the estate, or by sale or mortgage thereof for the whole or any part of the term, to raise the money required, and upon trust to permit the tenant for life to receive the residue of the rents and profits. In practice, however, the power thus created of receiving the rents directly from the tenants, or of selling or mortgaging the term, is rarely exercised, except for raising gross sums (*e. g.* portions), as it is to the advantage of the tenant for life to keep down the annuities so that he may not be disturbed in the possession of the land. Wms. Real Prop. 413; Elph. Conv. 325.

§ 4. Terms created in this manner are called "pin-money-terms," "jointure-terms," "portions-terms," &c., according to the purposes for which they are created. Elph. Conv. 328. *See* SETTLEMENT, § 4.

§ 5. **Satisfied term.**—When the purpose for which a term has been created is accomplished, the term is said to be "satisfied." *See* CESSER.

§ 6. **Attendant term—Term in gross.**—Formerly, when a term had become satisfied, it was usual in some cases to keep it on foot "in trust to attend the inheritance," as it was expressed. Thus, if property subject to a long term was sold, so that the powers of raising portions, &c., out of the land were no longer exercisable, the purchaser often preferred to keep the term on foot, because it protected him from any unknown incumbrances on the freehold created by the former owner since the commencement of the term, such incumbrances being postponed until the expiration of the term. The

purchaser, therefore, would have the term assigned to a trustee in trust for him, his heirs and assigns, and to attend the inheritance. Such a term was called an "attendant term," while an ordinary term was called a "term in gross." (As to the rule that the beneficial interest in an attendant term did not pass by a general bequest, see *Co. Litt.* 111 b; *Hargrave's note* (3); *Gunter v. Gunter*, 23 Beav. 571; *Belaney v. Belaney*, L. R. 2 Ch. 133.) Now, by the Stat. 8 and 9 Vict. c. 112, every term becoming attendant upon the inheritance of land, immediately ceases and determines; but the protection afforded by attendant terms existing before the act is preserved. *Wms. Real Prop.* 416 *et seq.*

§ 7. **Enlargement of terms.**—By the English Conveyancing Act, 1881, where a residue unexpired of not less than 200 years of a term which, as originally created, was for not less than 300 years, is subsisting in land, without any trust or right of redemption affecting the term in favor of the freeholder or reversioner, and without any rent having a money value, then (1) any person beneficially entitled, in right of the term, to possession of any land comprised in the term, or (2) any person who is in receipt of the income of the land in right of the term, or in whom the term is vested in trust for sale, or (3) any person in whom the term is vested as personal representative of any deceased person, may by deed declare that the term shall be enlarged into a fee-simple. Thereupon the term is enlarged accordingly, and the person in whom the term was vested acquires the fee-simple, subject to the same trusts, powers, rights, obligations, &c., as the term would have been subject to. (Section 65.) "Numerous instances occur in practice in which estates really held merely for the residue of long terms are practically treated as freehold. This section enables such terms, when the residue is not less than 200 years and the original term not less than 300 years, to be enlarged into a fee-simple." *Wms. Conv. Act* 102.

§ 8. **Law terms.**—"Term" also signifies a portion of the year during which, according to the practice of the courts, judicial business could alone be transacted. By modern English statutes, however, a considerable part of the intervening vacations was made available for the sittings of the courts and other business; and now by the Judicature Acts, 1873, 1875, the division of the year into terms has been abolished, so far as relates to the administration of justice, the year being now divided into sittings and vacations (*q. v.*), (*Judicature Act*, 1873, § 26 *et seq.*); but the terms still exist for some purposes (*College of Christ v. Martin*, 3 Q. B. D. 16), *e. g.* in computing the period required for a call to the bar by the Inns of Court. The terms for judicial business were (1) Hilary, from 11th to 31st January; (2) Easter, from

from 15th April to 5th May; (3) Trinity, from 22d May to 12th June, and (4) Michaelmas, from 2d to 25th November. *Sm. Ac.* (11 edit.) 17; *Arch. Pr.* 162. For the history of terms, see 3 *Steph. Com.* 482 *et seq.*

§ 9. **Ecclesiastical procedure.**—In ecclesiastical procedure, term signifies a period. Thus, a term probatory is the time assigned by the court for the examination of witnesses. *Phillim. Ecc. L.* 1256.

TERM, (defined). 3 *Metc. (Ky.)* 207; 11 *Phil. (Pa.)* 370; 3 *Atk.* 137; *Burr.* 285; *Willes* 335; *Com. L. & T.* 83.

— (for which notice of trial may be given). 19 *Minn.* 539.

— (in a lease). 1 *Chit. Gen. Pr.* 159.

— (in a statute). 1 *Dowl. & Ry.* 433.

TERM, CONSTITUTIONAL, (in statute relating to officers). 2 *Wend. (N. Y.)* 276.

TERM, DURING THE SAID, (in a covenant). 4 *Barn. & C.* 261.

TERM FREE.—A certain sum, which an attorney is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party who has to pay costs to him; it is payable for every term (generally not exceeding five) in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ, shall take place.

TERM, FOR AND DURING THE SAID, (in a lease). 6 *Dowl. & Ry.* 349.

TERM, LEASED, (in a covenant). 2 *Barn. & C.* 216.

TERM OF OFFICE, (defined). 33 *Ind.* 517, 526.

TERM OF ONE YEAR, (in statute of frauds). 5 *N. Y.* 463.

TERM OF YEARS—TERMOR.—*See TERM*, § 1.

TERM OF YEARS, (in a statute). 14 *Pick. (Mass.)* 40.

TERM PROBATORY.—*See TERM*, § 9.

TERM PROBATORY, (defined). *Coote Ecc. Pr.* 240, 241.

TERMES DE LA LEY.—*See RASTELL.*

TERMINABLE ANNUITIES.—*See TERMINABLE PROPERTY.*

TERMINABLE PROPERTY.—Such property (*e. g.* leaseholds, terminable annuities and the like) as has no permanent duration, but will and must end and determine at a certain term usually ascertained beforehand. When any such property is comprised in a residuary bequest, upon trust for successive takers of limited estates or interests therein, it is the duty

of the trustee (unless relieved therefrom by the will itself) to sell and convert the property and invest the proceeds in some investment of a permanent and not terminable character. (*Howe v. Lord Dartmouth*, 7 Ves. 187; *Wright v. Lambert*, 6 Ch. D. 649.)—*Brown*.

TERMINATE, (defined). 54 Cal. 605.

TERMINATING BUILDING SOCIETIES.—Societies, in England, where the members commence their monthly contributions, on a particular day, and continue to pay them until the realization of shares to a given amount for each member, by the advance of the capital of the society to such members as required it, and the payment of interest as well as principal by them, so as to ensure such realization within a given period of years. They have been almost superseded by permanent building societies (*q. v.*)

TERMINATION, (of a voyage). 8 Cranch (U. S.) 75.

TERMINUM.—A day given to a defendant.—*Spel. Gloss*.

TERMINUM QUI PRETERIIT, WRIT OF ENTRY AD.—A writ which lay for the reversioner, when the possession was withheld by the lessee, or a stranger, after the determination of a lease for years.

TERMINUS A QUO.—The starting point.

TERMINUS AD QUEM.—The terminating point.

Terminus annorum certus debet esse et determinatus (Co. Litt. 45): A term of years ought to be certain and determinate.

Terminus et feodum non possunt constare simul in una eademque persona (Plowd. 29): A term and the fee cannot both be in one and the same person at the same time.

TERMINUS HOMINIS.—A time for the determination of ecclesiastical appeals, shorter than the *terminus juris*, appointed by the judge.

TERMINUS JURIS.—The time of one or two years, allowed by law for the determination of ecclesiastical appeals.

TERMOR.—He that holds lands or tenements for a given number of years or for life. See **TERM**, § 1.

TERMS, (in a statute). 3 Q. B. D. 16, 18.

TERMS, ACCOMMODATING, (in proposal to sell). 42 Me. 157, 163.

TERRA.—Earth; soil; arable land.—*Kenn. Gloss*.

TERRA, (does not apply to pasture land). 4 Mod. 93.

TERRA AFFIRMATA.—Land let to farm.

TERRA BOSCALIS.—Woody land.

TERRA CULTA.—Cultivated land.

TERRA DEBILIS.—Weak or barren land. Inq. 22 R. 2.

TERRA DOMINICA, or **INDOMINICATA**.—The demesne land of a manor.—*Cowell*.

TERRA EXCULTABILIS.—Land which may be ploughed.—*Mon. Ang.* i. 426.

TERRA EXTENDENDA.—A writ addressed to an escheator, &c., that he inquire and find out the true yearly value of any land, &c., by the oath of twelve men, and to certify the extent into the Chancery.—*Reg. of Writs* 293.

TERRA FRUSCA, or **FRISCA**.—Fresh land, not lately ploughed.—*Cowell*.

TERRA HYDATA.—Land subject to the payment of hydate.—*Selden*.

TERRA LUORABILIS.—Land gained from the sea or inclosed out of a waste.—*Cowell*.

Terra manens vacua occupanti conceditur (1 Sid. 347): Land lying unoccupied is given to the first occupant.

TERRA NORMANORUM.—Land held by a Norman.—*Par. Antiq.* 197.

TERRA NOVA.—Land newly converted from wood ground or arable.—*Cowell*.

TERRA FUTURA.—Land in forests, held by the tenure of furnishing food to the keepers therein. 4 Inst. 307.

TERRA SABULOSA.—Gravelly or sandy ground.

TERRA TESTAMENTALIS.—Gavelkind land, being disposable by will.—*Spel. Gloss*.

TERRA VESTITA.—Land sown with corn.—*Cowell*.

TERRA WAINABILIS.—Tillable land.—*Cowell*.

TERRA WARRENATA.—Land that has the liberty of free-warren.

TERRÆ DOMINICALES REGIS.—The demesne lands of the crown.

TERRAGES.—An exemption from all uncertain services.—*Cowell*.

TERRARIUS.—A landholder.—*Leg. W.* 1.

TERRE-TENANT, or TER-TENANT, which, in Norman-French, literally means "landholder," is used in the old books to signify a person who has the seisin of land, as opposed either (1) to the lord of whom he holds it, and who merely has a seignory (*q. v.*), or (2) to a person to whose use he was seised of the land, before the Statute of Uses. Thus, if, before the Statute of Uses, A. conveyed land by feoffment to B and his heirs, to the use of C. and his heirs, B. was called the "*terre-tenant*" or "feoffee to uses," and C. was called the "*cestui que use*." (Cn. Litt. 271 b; 2 Bl. Com. 91, 328. See USE.) The word is now obsolete.

§ 2. In the law of execution a "*terre-tenant*" is an owner in fee of land which he has acquired from a defendant who has suffered judgment. Formerly every judgment charged the land of the defendant, and if he died after judgment, execution might be issued against his heirs and *terre-tenants*. See 2 Wms. Saund. 51; Arch. l'r. 928. See, also, JUDGMENT, § 16.

TERRE-TENANT, (defined). 2 Saund. 7 n.

TERRIER, or TERRAR.—A register or survey of land. As to when it is evidence, see 3 Price 380.

TERRIS BONIS ET CATALLIS REHABENDIS, POST PURGATIONEM.—A writ for a clerk to recover his lands, goods and chattels, formerly seised, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged.—*Reg. Orig.*

TERRIS ET CATALLIS TENTIS ULTRA DEBITUM LEVATUM.—A judicial writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt.—*Reg. Jud.*

TERRIS LIBERANDIS.—A writ that lay for a man convicted by attain, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste (*Reg. Orig.* 232); also, it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them.—*Id.* 293.

TERRITORIAL—TERRITORIALITY.—These terms are used to signify connection with, or limitation with reference to, a particular country or territory. Thus, "territorial law" is the correct expression for the law of a particular country or State (8 Sav. Syst., *passim*), although "municipal law" is more common. (See LAW, § 3.) "Territorial waters" are that part of the sea adjacent to the coast of a given country which is by international law deemed to be within the sovereignty of that country, so that its courts have

jurisdiction over offenses committed on those waters, even by a person on board a foreign ship. The ordinary limits of territorial waters are a distance of one marine league from low-water mark. Territorial Waters Juris. Act, 1878, (passed in consequence of the decision in *Reg. v. Keyn*, 2 Ex. D. 63). See HIGH SEAS, § 1; KING'S CHAMBERS. As to territorial jurisdiction, see JURISDICTION, § 6; see, also, EXTRA-TERRITORIALITY.

TERRITORIAL COURTS—The courts established in the territories of the United States.

TERRITORIAL COURTS, (are not courts of the United States). 1 Fla. 198.

TERRITORY, (is not a state). 1 Wheat. (U. S.) 94.

— (the Cherokee nation is). 79 N. C. 280.

— (in a statute). 9 Gray (Mass.) 501.

— (lying between two rivers). 2 Pet. (U. S.) 436; 9 Wheat. (U. S.) 469.

TERRORUM POPULI, (in an indictment for riot). Stark. Cr. Pl. 85.

TERTIUS INTERVENIENS.—In the civil law, one who voluntarily interposes in a suit depending between others, with a view to the protection of his own interests.

TEST.—To bring one to a trial and examination; or to ascertain the truth or the quality or fitness of a thing.

TEST ACT.—The Stat. 25 Car. II. c. 2, by which it was provided that all persons having any offices, civil or military (with the exception of some few of an inferior kind), or receiving pay from the crown, or holding a place of trust under it, should take the oath of allegiance and supremacy, and subscribe a declaration against transubstantiation, and also receive the sacrament of the Lord's supper according to the usage of the Church of England. The provisions of the Test Act were afterwards extended by 1 Geo. I. st. 2, c. 13; 2 Geo. II. c. 31; and 9 Geo. II. c. 26. The Test Act was repealed by 9 Geo. IV. c. 17, which also repealed the Corporation Act, 13 Car. II. st. 2, c. 1. (See 29 and 30 Vict. c. 22, 4 Broom & II. Com. 60-7.)—*Wharton*.

TEST ACTION.—Where in the same court there are several pending actions instituted by divers plaintiffs against the same defendant or defendants—then, if the question or questions in dispute are substantially the same in all the actions (and consequently, the evidence in proof or disproof of the question or questions, when of fact, is substantially the same), the court will on the application of the plaintiffs, or

such of them as choose to apply, or of the defendant or defendants, make an order which is in effect a consolidation order, that is to say, the court will select one, or more, of the divers actions as a test action, or test actions, and the plaintiff undertaking to try these selected actions and to abide by the result therein in all the other actions, the court will, in its discretion, allow for taking the next step in these other actions such an extension of time as will permit the selected actions to be first tried. See CONSOLIDATION OF ACTIONS.

TESTA DE NEVIL.—An ancient document in two volumes, in the custody of the Queen's Remembrancer in the Exchequer, more properly called "*Liber Feodorum*."

These books contain principally accounts (1) of fees holden either immediately of the king, or others who held of the king *in capite*, and if alienated whether the owners were infeoffed *ab antiquo* or *de novo*, as also fees holden in frank-almoign, with the values thereof respectively; (2) of serjeanties holden of the king, distinguishing such as were rented or alienated, with the values of the same; (3) of widows, and heiresses of tenants *in capite*, whose marriages were in the gift of the king, with the value of their lands; (4) of churches in the gift of the king, and in whose hands they were; (5) of escheats, as well of the lands of Normans as others, in whose hands the same were, and by what services holden; (6) of the amount of the sums paid for scutage and aid, &c., by each tenant.

These volumes were printed in 1807, under the authority of the commissioners of the records of the realm.—*Wharton*.

TESTABLE.—A person is said to be testable when he has capacity to make a will; a man of twenty-one years of age and of sane mind is testable. The capacity to make a will must be distinguished from a special power to dispose of property by will. Thus, a power given to a married woman by a settlement to dispose of property by will, does not make her testable. (*Willock v. Noble*, L. R. 7 H. L. 593.) But if property is settled on a married woman for her separate use, she is testable so far as that property is concerned.

TESTAMENT.—LATIN: *testamentum*, from *testari*, to declare, and not from *testatio mentis*, as stated by Lord Coke. 2 Just. Inst. 10; Co. Litt. 322 b.

Strictly speaking, a will of personal property; a will of land not being called a "testament." (Wms. Ex. 6, 7.) The word "testament" is now seldom used, except in the heading of a formal will, which usually begins—"This is the last will and testament of me, A. B., &c."

TESTAMENT, (what is). 6 Watts (Pa.) 353.
—— (a rough draft may be). 3 Rawle (Pa.) 15.

Testamenta cum duo inter se pugnantia reperiuntur, ultimum ratum est; sic est, cum duo inter se pugnantia reperiuntur in eodem testamento (Co. Litt. 112): When two conflicting wills are found, the last prevails; so it is when two conflicting clauses occur in the same will.

Testamenta latissimam interpretationem habere debent (Jenk. Cent. 81): Wills ought to have the broadest interpretation.

TESTAMENTARY.—

§ 1. "Testamentary power" is the power of making a valid will, either generally, or with reference to particular kinds or dispositions of property. "Testamentary capacity" usually refers to the absence of some disability which prevents a person from making a valid will; thus, infants and lunatics have not testamentary capacity.

§ 2. A paper, instrument, document, gift, appointment, &c., is said to be testamentary when it is written or made so as not to take effect until after the death of the person making it, and to be revocable and retain the property under his control during his life, although he may have believed that it would operate as an instrument of a different character. Thus, deeds of gift, marriage settlements, letters, &c., when executed with the formalities of a will, have been admitted to probate as testamentary instruments. (Wms. Ex. 100, 373, 1498; Wats. Comp. Eq. 1171.) The term "testamentary documents" of course includes wills and codicils, which are in form as well as in effect testamentary. See SCRIPT.

TESTAMENTARY CAPACITY.—

See TESTAMENTARY, § 1.

TESTAMENTARY CAPACITY, (what is). 5 Harr. (Del.) 459.

—— (is a question for the court). 2 McCart. (N. J.) 202.

TESTAMENTARY CAUSES.—

Proceedings in a court of justice relating to the proving and validity of wills and intestacies of personal property.

TESTAMENTARY ESTATE, (in a will). 2 H. Bl. 444.

TESTAMENTARY ESTATE AND EFFECTS, (in a will). 3 Brod. & B. 85, 91.

TESTAMENTARY EXPENSES, (in a will). 11 Ch. D. 440.

TESTAMENTARY GUARDIAN.

—A person appointed by a father in his last will and testament to be the guardian of his child until he or she attains the age of twenty-one years. The power of appointmentsuch a guardian was first conferred on the father by Stat. 12 Car. II. c. 24. See **GUARDIAN**, § 9.

TESTAMENTARY MATTER, (in a statute). 22 Ohio St. 190.

TESTAMENTI FACTIO.—In the civil law, the ceremony of making a testament, either as testator, heir, or witness.

TESTAMENTORUM GENERA.—In Roman law, the ancient wills were two, viz., (1) That made in and with the sanction of the *Culuta Comitia*, and which, therefore, was only open to the [Patrician] members thereof to make; and (2) That made before going into battle, and called *In Procinctu* (i. e. "with the loins girt about"). After the Twelve Tables, a third form of will called *Per ces et libram* was introduced, and was open alike to patricians and to plebeians to make. Subsequently, an alternative mode of will came into existence, the peculiarity of which was its seals (of seven witnesses), and this latter mode of will was and was called the "Prætorian will." A fifth and subsequent form of will was called the *Tripertitum Jus*, because it combined peculiarities derived from the civil law, from the Prætorian edicts, and from Imperial legislation. There was also the informal will for soldiers, and the nuncupative (or word of mouth) will.—*Brown*.

Testamentum, i. e. *testatio mentis*, *facta nullo præsentem metu periculi, sed cogitatione mortalitatis* (Co. Litt. 322): A testament, i. e. the witnessing of the mind, made under no present fear of danger, but in expectancy of death.

Testamentum omne morte consummatur: Every will is perfected by death. A will speaks from the time of death only.

TESTATE.—A person is said to die testate when he leaves a will. See **INTESTATE**.

TESTATION.—Witness; evidence.

TESTATOR.—A person who makes a will.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam (Co. Litt. 322): The last will of a testator is to be thoroughly fulfilled according to his real intention.

TESTATRIX.—A woman who makes a will.

TESTATUM.—The witnessing part of a deed or agreement. See **DEED**.

TESTATUM WRIT.—Formerly a writ of execution could not be issued into a county different from that in which the venue in the action was laid, without first issuing a writ into the latter county, and then another writ, which was called a "testatum writ," into the former. This was abolished in England, in ordinary cases, by the Common Law Procedure Act, 1852, § 121. (Chit. Gen. Pr. 604.) A testatum writ seems to be still necessary when a *fi. fa. de bonis ecclesiasticis* has been issued into one diocese, but the entire debt is not levied on it, and the plaintiff wishes to have the residue levied from the defendant's ecclesiastical goods and chattels in another diocese. Chit. Gen. Pr. 1234; Arch. Pr. 1064.

TESTE.—The concluding part of a writ, giving the date and place of its issue. It is so called because it begins with the words "Witness ourself" (in Latin, *Teste meipso*), or similar words.

TESTED.—To be tested is to bear the *teste* (q. v.)

TESTES.—Witnesses.

Testes ponderantur non numerantur: Witnesses are weighed, not numbered.

Testes qui postulat debet dare eis sumptus competentes (Reg. Jur. Civ.): Whosoever demands witnesses, must find them in competent provision.

TESTES, TRIAL PER.—A trial had before a judge without the intervention of a jury; in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but this mode of trial, although it was common in the civil law, was seldom resorted to in the practice of the common law, but it is now becoming common when each party waives his right to a trial by jury.

Testibus deponentibus in pari numero dignioribus est credendum (4 Inst. 279): Where the number of witnesses is equal on both sides, the more worthy are to be believed.

TESTIFY.—To testify is to give evidence under oath or affirmation before a tribunal, court, judge or magistrate, for the purpose of proving some fact.

TESTIMOIGNES.—Law French for witnesses.

Testimonia ponderanda sunt, non numeranda: Evidence is to be weighed, not enumerated.

TESTIMONIAL.—A certificate under the hands of a justice of the peace testifying the place and time when and where a soldier or mariner landed, and the place of his dwelling and birth, whither he is to pass (*Cowell*; 3 Inst. 85). The document holds a kind of doubtful position midway between a certificate and a permit, or pass.—*Brown*.

TESTIMONIAL PROOF.—In the civil law, parol evidence.

TESTIMONY.—The evidence of a witness given *vivâ voce* in a court of justice or other tribunal. (*See EVIDENCE*, § 7.) In the old books, "testimony" means "witness." Co. Litt. 32b.

TESTIMONY, (defined). 60 Ind. 153.
 — (not synonymous with "evidence"). 13 Ind. 388; 17 *Id.* 95, 230; 18 *Id.* 443.

Testis de visu præponderat aliis (4 Inst. 279): An eye-witness is preferred to others.

Testis lupanaris sufficit ad factum in lupanari (Moor 817): A lewd person is a sufficient witness to an act committed in a brothel.

Testis nemo in sua causa esse potest (Reg. Jur. Civ.): No one can be a witness in his own cause.

Testis oculatus unus plus valet quam auriti decem (4 Inst. 279): One eye-witness is worth more than ten ear-witnesses.

TEXT BOOK.—A legal treatise which lays down principles or collects decisions on any branch of the law.

THANAGE OF THE KING.—A certain part of the king's land or property, of which the ruler or governor was called "thane."—*Cowell*.

THANE.—An Anglo-Saxon nobleman; an old title of honor, perhaps equivalent to baron. There were two orders of thanes, the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused.—*Cowell*.

THANELANDS.—Such lands as were granted by charter of the Saxon kings as to their thanes with all immunities, except the *trinoda necessitas*.—*Cowell*.

THANESHIP.—The office and dignity of a thane; the seignior of a thane.

THAT, (in a covenant against encumbrances). 5 Halst. (N. J.) 22.
 — (in a lease). 3 Dyer 255a.

THAT IS TO SAY, (construed). Hob. 171, 172.
 — (in an indictment). 2 W. Bl. 787; 1 Chit. Cr. L. 174, 175.

THAT WHEREAS, FOR, (in a declaration). 3 Hen. & M. (Va.) 127, 271.

THAVIES INN.—An inn of Chancery. *See INNS OF CHANCERY*.

THE, (in a statute). 70 N. Y. 481.

THE BALANCE OF CASH, (in a contract of sale). 2 Whart. (Pa.) 206.

THE BOOKS, (in a statute). 2 Allen (Mass.) 158.

THE JUSTICES, (writ of replevin returnable before). 1 Hill (N. Y.) 204.

THE SAID E. R., (in an indictment). 9 Car. & P. 215.

THE SAID PROPERTY, (in a will). 3 Man. & G. 356.

THE TWO, (in a will). 6 Watts (Pa.) 203.

THE WOODEN BUILDING, (in a will). 160 Mass. 117.

THEFT.—Larceny (*q. v.*), or the act of stealing.

THEFT, (defined). 34 N. Y. 442; 1 Tex. App. 65; 10 *Id.* 279, 284.

— (what taking is). 10 Tex. App. 215.

— (what taking is not). 10 Tex. App. 63.

— (synonymous with "larceny"). 3 Cr. L. Mag. 264.

— (in an insurance policy). 26 Wend. (N. Y.) 563, 587.

THEFTBOTE.—Compounding a felony. *See COMPOUND*, § 3.

Theftbote est emenda furti capta, sine consideratione curiæ domini regis (3 Inst. 134): Theftbote is the paying money to have goods stolen returned, without having any respect for the court of the king.

THEIR, (in a declaration upon a partnership note). 7 Johns. (N. Y.) 468.

THEIR CHILDREN AFTER THEM RESPECTIVELY, (in a will). 2 Younge & Coll. C. C. 478.

THEIR ESTATE, (in a will). 2 Hawks (N. C.) 117; Hob. 276.

THEIR HEIRS FOREVER, (in a will). 1 Bush (Ky.) 526.

THEIR LEGAL REPRESENTATIVES, (in a will). 20 Pa. St. 349.

THEIR REAL ESTATE, (in a grant). 2 Serg. & R. (Pa.) 180.

THEIR TWO-STORY BRICK AND GRAVELED ROOF BUILDING, (in an insurance policy). 122 Mass. 194.

THELUSSON ACT.—The Stat. 39 and 40 Geo. III. c. 98 forbidding the accumulation of income beyond certain named periods. *See ACCUMULATION*.

THELONIO IRATIONABILI HABENDO.—A writ that formerly laid for him that had any part of the king's demesne in fee-farm, to recover reasonable toll of the king's

tenants there, if his demesne had been accustomed to be tolled.—*Reg. Orig.* 87.

THELONIUM.—An abolished writ for citizens or burgesses to assert their right to exemption from toll.—*F. N. B.* 226.

THELONMANNUS.—The toll-man or officer who receives toll.—*Cowell.*

THEM, or THEME.—The right of having all the generation of villeins, with their suits and cattle.—*Termes de la Ley.*

THEMMAGIUM.—A duty or acknowledgment paid by inferior tenants in respect of theme or team.—*Cowell.*

THEMSELVES OR ANY OF THEM, THEIR HEIRS, EXECUTORS, OR EITHER OF THEIR HEIRS, (in a joint and several bond). *Cro. Jac.* 322.

THEN, (defined). 2 *Atk.* 310.
— (when means "soon after"). 8 *Hun* (N. Y.) 43.

— (in an award). 1 *Ld. Raym.* 123; 5 *Com. Dig.* 339.

— (in a declaration). *Willes* 528.

— (in a deed). 1 *Baldw.* (U. S.) 201.

— (in a will). 6 *Mass.* 172, 176; 128 *Id.* 38, 40; *Penn.* (N. J.) 40, 46; 24 *Barb.* (N. Y.) 645, 647; 5 *Watts* (Pa.) 436; 9 *Id.* 346; 3 *Whart.* (Pa.) 305; 2 *Desaus.* (S. C.) 100; 2 *Munf.* (Va.) 479; 1 *Moll.* 481; 1 *P. Wms.* 170; 7 *T. R.* 557; 4 *Ves.* 698; *Willes* 293, 301.

THEN AFTER, (in a will equivalent to "immediately after"). 1 *P. Wms.* 565.

THEN AND THERE, (not equivalent to "immediately" or "instantly"). 1 *Mo. App.* 3, 6.

— (in a declaration in slander). 5 *Serg. & R.* (Pa.) 193; 4 *Wheel. Am. C. L.* 173; 2 *J. B. Moo.* 66; 1 *Ld. Raym.* 576.

— (in an indictment). 2 *Bibb* (Ky.) 490; 71 *Me.* 354; 12 *Allen* (Mass.) 152; 100 *Mass.* 12; 4 *Car. & P.* 548; 1 *Leuch C. C.* 529; 1 *Chit. Cr. L.* 198, 220; *Stark. Cr. Pl.* 63; 4 *Com. Dig.* 671, *n.* (b).

— (omission of in a caption to an indictment). 6 *Halst.* (N. J.) 203; 3 *Johns.* (N. Y.) *Cas.* 205.

THEN BE DEAD, (in a will). *L. R.* 1 *H. L.* 175.

THEN ELAPSED, (in a declaration). 4 *Barn. & C.* 157, 159.

THEN LIVING, (in a bond). 1 *Dyer* 14b.

— (in a will). 5 *Binn.* (Pa.) 611; *L. R.* 11 *Eq.* 522; 16 *Id.* 258.

THEN NEXT, (in pleading time). 9 *Cow.* (N. Y.) 255.

THEODEN.—An under-thane; a husband-man or inferior tenant.—*Spel. Gloss.*

THEODOSIAN CODE.—See *CODEx THEODOSTANUS.*

THEOF.—Among the Saxons, offenders who joined in a body of seven to commit depredations.

THEOWES, THEOWMEN, or THEWS.—Slaves, captives, or bondmen. *Spel. Feuds* c. 5.

THERE, (in a declaration). 1 *Ld. Raym.* 121; 8 *Taunt.* 173.

— (in an indictment). 12 *Minn.* 490.

THEREAFTER, (in a statute). 13 *La.* 556, 562; 9 *Phil.* (Pa.) 479.

THEREAFTER, AT ALL TIMES, (in a bond). 2 *Bing.* 32, 39.

THEREAFTER BUILT, (in a statute). 2 *Leigh* (Va.) 721.

THEREIN, (equivalent to "thereof" or "thereunto"). 7 *Mod.* 130.

— (in a statute). 6 *Mass.* 270; 3 *Barn. & C.* 857.

THEREINAFTER MENTIONED, (in a lease). 6 *Barn. & C.* 430, 433.

THEREOF, (in a will). 1 *Atk.* 423.

THEREOF AS FOLLOWETH, (in a will). 3 *Wils.* 418.

THEREON, (in an insurance policy). 106 *Mass.* 400.

THEREOUT, (is a word of reference). 2 *Bos. & P.* 252.

— (in a will). 1 *Barn. & Ad.* 593.

THEREOUT PAID, (in a will). 3 *T. R.* 356.

THEREOUT, PAID, (in a will). *Love. Wills* 154.

THEREOUT, PAYING, (not necessary in a will to make a legacy a condition). 11 *Ir. Eq.* 386.

THEREUNTO APPERTAINING, (in a lease). 2 *Barn. & C.* 96, 100.

THEREUNTO BELONGING, (in a will). 2 *Barn. & Ad.* 681; 1 *Barn. & C.* 350, 356; 1 *Bing.* 483; 2 *Dowl. & Ry.* 508; 8 *Moo.* 665.

THEREUPON, (equivalent to "in consideration thereof"). 67 *Me.* 483.

— (in a statute). 2 *Gr.* (N. J.) 44.

THEREUPON, AND, (in a declaration). 4 *Barn. & C.* 380.

THEREWITH, (in a will). 1 *Atk.* 607, 609.

THEREWITH USUALLY HELD, USED, OCCUPIED OR ENJOYED, (in a deed). 2 *Nev. & M.* 517.

THESAURUS, THESAURIUM.—The treasury; a treasure.

THESAURUS ABSCONDITUS.—Treasure hidden, or buried.—*Spel. Gloss.*

Thesaurus competit domino regi, et non domino liberatis, nisi sit per verba specialia (*Fitz. Coron.* 281): A treasure belongs to the king and not to the lord of a liberty, unless it be through special words.

THESAURUS INVENTUS.—Treasure-trove (*q. v.*)

Thesaurus inventus est vetus depositio pecuniæ, &c., cujus non extat modo memoria, adeo ut jam dominum non habeat (3 *Inst.* 132): Treasure-trove is an ancient hiding of money, &c., of which no recollection exists, so that it now has no owner.

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum (3 *Inst.* 132): Treasure does not belong to the king, unless no one knows who hid it.

Thesaurus regis est vinculum pacis et bellorum nervus (*Godb.* 293): The

king's treasure is the bond of peace and the sinew of wars.

THESMOTHETE.—A law-maker; a law-giver.

TETHING-A.—A tithing.

THEY CAME OF AGE, BEFORE, (in a will). Cowp. 257.

THIBAUT.—Anton F. J. Thibaut was born January 4th, 1772, became professor at Jena and Heidelberg, and died March 28th, 1840. He wrote *Juristische Encyclopädie, Theorie der logischen Auslegung des Römischen Rechts, System des Pandectenrechts*, and numerous essays, &c. (Holtz. Encycl.) He was an opponent of the historical school of jurisprudence, and was considered by his contemporaries as hardly inferior to Savigny, but his writings are now seldom referred to.

THIEF.—One who has committed larceny.

THIEVES, (in exception in bill of lading). L. R. 9 Q. B. 546.

— (in an insurance policy). 1 Hill (N. Y.) 25; 5 Paige (N. Y.) 285, 293; 26 Wend. (N. Y.) 563, 587.

THING, (in a statute). 8 Dowl. & Ry. 117; 2 Chit. Gen. Pr. 219.

THINGS.—The subjects of dominion or property, as distinguished from *persons*. They are distributed into three kinds: (1) things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*), and incorporeal (*tangi non possunt*). See CHOSE.—*Wharton*.

THINGS, (in a deed). 2 Pick. (Mass.) 366.

— (in a will). 1 Dow 73; 3 Ves. 212, 219; 4 Com. Dig. 155.

THINGS DONE IN PURSUANCE OF AN ACT, (in a statute). Wilberf. Stat. L. 87.

THINGS DULY DONE, (in public health act). 1 Q. B. D. 220.

THINGS IN ACTION, (in bankruptcy act). L. R. 12 Eq. 354.

THINGS NOT BEFORE BEQUEATHED, (in a will). 2 Eq. Cas. Abr. 323.

THINGS OF EVERY KIND, (in a will). 2 Atk. 112, 113.

THING-US.—A thane or nobleman; knight or freeman.—*Cowell*.

THINK HIMSELF AGGRIEVED, (in a statute). 3 Barn. & Ad. 938.

THINKS, (in an affidavit to an appeal). 2 Gr. (N. J.) 311.

THIRD-NIGHT-AWN-HINDE.—By the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a "third-night-awn-hinde," and his host was answerable for him if he committed any offense. The first night, for-man-night, or uncuth (unknown), he was reckoned a stranger; the second night, two-night, a guest; and the third night, an agen-hinde, a domestic.—*Bract*. l. 3.

***THIRD OFFENSE,** (defined). 29 Mich. 472.

THIRD PARTIES, (who are). 1 Mart. (La.) n. s. 384.

THIRD PARTY.—"Third party" is a colloquial and not very logical phrase, signifying a person who is a stranger to a transaction or proceeding; in other words, some one who is not a party at all. (See STRANGER.) It is chiefly used in the expression "notice to third party," as to which see CITATION, § 2n. *MacAllister v. Bishop of Rochester*, 5 C. P. D. 194; *Wye Valley Rail. Co. v. Hawes*, 16 Ch. D. 489.

THIRD PENNY.—See DENARIUS TERTIUS COMITATUS.

THIRD PERSONS, (in act of congress of March 3d, 1851). 18 Cal. 11, 28, 535; 20 *Id.* 387; 26 *Id.* 615.

THIRDBOROUGH, or THIRDBOROW.—An under constable.—*Cowell*.

THIRDED, (in a will). 4 Dana (Ky.) 158, 162.

THIRDINGS.—The third part of the corn growing on the land, due to the lord for a heriot on the death of his tenant, within the manor of Turfat in Hereford.—*Blount*.

THIRDS.—The widow's right to one-third part of her husband's personal property, in the case of his decease intestate leaving children or a child, is called by this name. The widow takes her thirds absolutely, and not (as in the case of her dower-third) for life only. Thirds are defeasible by the husband's will, and have been so since the reign of Henry II.

THIRDS, (synonymous with "dower"). 2 Abb. (N. Y.) Fr. n. s. 418; 30 How. (N. Y.) Pr. 278.

— (in a will). 1 Houst. (Del.) 438; 2 Allen (Mass.) 349; 46 Barb. (N. Y.) 609; 2 Keyes (N. Y.) 558, 560.

THIRLAGE.—A servitude or tenure in Scotland, by which the possessor of certain lands.

is bound to carry his grain to a certain mill to be ground, for which he is bound to pay a portion of the flour or meal, varying from a thirtieth to a twelfth part, which is termed *multure*. This servitude is now commuted for an annual payment in grain by 39 Geo. III. c. 55. *See Bell Dict.*

THIRTY DAYS AFTER ARRIVAL, (in marine insurance policy). L. R. 5 C. P. 190.

THIRTY DAYS AFTER PROOF THEREOF, (in a policy of insurance). 3 Johns. (N. Y.) Cas. 224.

THIRTY FEET STREET, (grant of land as bounded on). 4 Mass. 589.

THIRTY-NINE ARTICLES.—*See ARTICLES OF RELIGION.*

THIS ACT, (in a statute). Wilberf. Stat. L. 252, 253, 264-266.

THIS DAY SIX MONTHS, or **THREE MONTHS**.—Fixing "this day six months or three months" for the next stage of a bill, is one of the modes in which the House of Lords and the House of Commons reject bills of which they disapprove. A bill rejected in this manner cannot be re-introduced in the same session.

THIS DEMISE, (in a lease). 2 W. Bl. 973, 974.

THIS INDENTURE, (in a deed). 2 Wash. (Va.) 58, 63.

THISTLE-TAKE.—It was a custom with-in the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permit them to graze or take but a thistle, he shall pay a halfpenny a piece to the lord of the fee. And at Fiskerton, in Nottinghamshire, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called "thistle-take."—*Cowell.*

THOROUGHFARE.—A street or road admitting a passage through it, *i. e.* open for traffic or for passage at both ends. *See HIGHWAY.*

THOROUGHFARE, (distinguished from "high-way"). 5 Barn. & Ald. 454, 456.

THOROUGHLY DRIED, (of sole leather). 24 Pick. (Mass.) 335.

THORP, THREP, TROP.—Either in the beginning or end of the names of places, means a street or village.

THOSE, (in a statute). 2 Yeates (Pa.) 14.

THOUSAND, (in a lease, as meaning twelve hundred). 3 Barn. & Ad. 728.

THRAVE, or **THREAVE**.—Twenty-four sheaves or four shocks of corn; a certain quantity of straw; also, a herd, a drove, a heap.

THREAD.—A middle line; a line running through the middle of a stream or road. *See FILUM AQUÆ; FILUM VIÆ.*

THREAT, (in act relating to the extortion of money by). 12 Allen (Mass.) 449.

THREATEN AND ACCUSE, (synonymous with "charge and accuse"). 12 Cush. (Mass.) 91.

THREATENING LETTERS, (indictment for sending, in which county should be found). 2 Barb. (N. Y.) 427.

THREATS.—In criminal law, the sending of a letter threatening to kill or murder a person, or to commit arson, or to injure cattle, &c., is a felony; and any one who attempts to extort money, &c., from a person by threatening to accuse him of certain crimes, is liable to imprisonment; demanding money, &c., by other threats is also punishable. *See DURESS*, § 1.

THREE, (in a will, equivalent to "nine"). 13 Jur. 164; 18 L. J. Ch. N. s. 157.

THREE SISTERS, (devise to). 4 Hare 249.

THREE-STORY GRANITE BUILDINGS, (in an insurance policy). 120 Mass. 225, 226.

THRENGES.—Vassals, but not of the lowest degree, of those who held lands of the chief lord.

THRITHING.—A division consisting of three or four hundreds.

THROAT, (in an indictment). 6 Car. & P. 401.

THROAT DISEASE, (defined). 22 Int. Rev. Rec. 152.

THROUGH, (in a deed). 7 Pick. (Mass.) 274.

THROUGH CONTRACT, (defined). 46 N. Y. 271; 7 Am. Rep. 327.

THROW OUT.—To ignore (a bill of indictment).

THRUSH, (defined). Oliph. Hors. 59.

THRYMSA.—A Saxon coin worth four pence.—*Du Fresnoe.*

THUDE-WEALD.—A woodland, or person that looks after a wood.

THWERTNICK.—The custom of giving entertainments to a sheriff, &c., for three nights.

TICKET, (in a statute). 2 Gr. (N. J.) 21.

TICKETS OF LEAVE.—In English criminal law, licenses to be at large, which are granted to convicts for good conduct, but are recallable upon subsequent misconduct. *See* 6 and 7 Vict. c. 7; 16 and 17 Vict. c. 99, § 9; 20 and 21 Vict. c. 3, § 5; 27 and 28 Vict. c. 47, §§ 4-10, and 34 and 35 Vict. c. 112. 4 Steph. Com. (7 edit.) 451 n.

TIDAL RIVERS.—*See NAVIGATION; RIVERS.*

TIDE.—The ebb and flow of the sea.

TIDE LANDS, (defined). 2 Sawy. (U. S.) 152; 30 Cal. 379; 32 *Id.* 354.

TIDE WATER, (defined). 108 Mass. 436, 447.
—— (conveyance of land bounded on). 5 Gray (Mass.) 336; 3 Paige (N. Y.) 313.

TIDESMAN.—In English law, a tidewater or custom house officer, who watches on board of merchant ships till the duty on goods be paid, and the ships unladen.

TIE.—See CASTING VOTE.

TIEL, or **TEL**.—Such. See NUL TIEL RECORD.

TIERCE.—The third part of a pipe, or forty-two gallons.

TIGH.—A close, or inclosure.

TIGHT, (in claim under patent). 27 Int. Rev. Rec. 38.

TIGNI IMMITTENDI.—In the civil law, a servitude which is the right of inserting a beam or timber from the wall of one house into that of a neighboring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight.

TIGNUM.—In the civil law, any material for building.

TIHLER.—In old Saxon law, an accusation.

TILLAGE.—Land under cultivation, as opposed to lands lying fallow or in pasture. By express agreement or by custom, the landlord may be liable to the tenant to allow him compensation for tillage remaining unexhausted at the determination of his tenancy.

TILLAGE, (defined). L. R. 6 C. P. 470; 7 *Id.* 72.

—— (when land is in a state of). 3 Taunt. 469.

TIMBER.

§ 1. Wood felled for building or other such like use; in a legal sense it generally means (in England) oak, ash, and elm, but in some parts of England, and generally, in America, it is used in a wider sense, which is recognized by the law.

§ 2. Timber and other trees form part of the land, and, on the death of the owner intestate, they pass with it to the heir, therein differing from growing crops. Timber when severed is personal estate.

§ 3. Cutting down timber is a form of waste (*q. v.*), except so far as it is required for estovers (*q. v.*) If a tenant without

impeachment of waste cuts timber in a husbandlike manner it vests in him; otherwise, if timber is cut or blown down, it belongs to the tenant in fee. (Wms. Pers. Prop. 19.) As to the power of the court to give relief to a *bonâ fide* purchaser of settled land where part of the purchase-money has by mistake been paid to the tenant for life, see Stat. 22 and 23 Vict. c. 35, § 13; Wms. Real Prop. 310. Where timber on a settled estate is likely to be injured by standing, the court will allow it to be cut, provided the money is secured for the persons entitled to the estate. Wms. Real Prop. 25.

§ 4. In England, where a person takes by succession land with timber or other trees, not being coppice or underwood, he must pay succession duty on all sums (exceeding £10 in any one year) from time to time received from any sales of such timber, unless he commutes the duty. Succession Duty Act, § 23. See SUCCESSION, § 4; SUCCESSION DUTY.

TIMBER, (what is). Burr. 1308, 1311; 10 East 446; 2 P. Wms. 601, 606; 7 Com. Dig. 668; Com. L. & T. 195.

—— (what is not). 7 Johns. (N. Y.) 234. Yelv. 152a.

—— (distinguished from "timber trees"). 2 Ld. Raym. 959.

—— (grant of). 4 Mass. 266.

—— (in contract for the purchase of). 51 Me. 417.

—— (in statute, when includes railroad ties). 9 N. W. Rep. 87.

TIMBER AND OTHER TREES, (in a lease). 1 Barn. & Ad. 622, 625.

TIMBER AND TIMBER LIKE TREES, (in an agreement). 15 Ves. 516.

TIMBER FOR BUILDING, (in a deed). 16 Johns. (N. Y.) 22.

TIMBER, STONE, OR OTHER THING, (in a statute). Wilberf. Stat. L. 180.

TIMBER TREES, (in a covenant). 5 Barn. & C. 842.

—— (in a lease). Cro. Jac. 487; 1 Dyer 79a; Com. L. & T. 78.

—— (in a will). 1 Barn. & Ad. 622.

TIMBER WOOD, (in a lease). Dyer 374b.

TIMBER WOOD OR TREES, (in a statute). 121 Mass. 42, 43.

TIMBERLODE.—A service by which tenants were bound to carry timber felled from the woods to the lord's house.—*Cowell*.

TIME.—

§ 1. As to the meanings of the expressions day, month, year, &c., when used in statutes or legal instruments, see the respective titles. By the act 43 and 44 Vict. c. 9, whenever any expression of time occurs in any act of parliament, deed, or

other legal instrument, the time referred to shall, unless otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time.

§ 2. The courts take judicial notice of the calendar, as settled by the Stat. 24 Geo. II. c. 23. (*See* NOTICE, § 1.) As to time being of the essence of a contract, *see* ESSENCE OF THE CONTRACT.

TIME, (computation of, rules for). 15 Mass. 193; 3 Halst. (N. J.) 303; 2 Cow. (N. Y.) 605; 6 *Id.* 660; 7 *Id.* 147; 2 Hill (N. Y.) 355, 375; 1 Wend. (N. Y.) 42; 5 *Id.* 137; 10 *Id.* 422; 3 Serg. & R. (Pa.) 496; 3 East 407; 3 T. R. 623; 15 Ves. 248; 7 Com. Dig. 396; 8 *Id.* 957.

— (not regarded the same in equity as at law). 7 Ves. 273; 12 *Id.* 326.

— (is not material in an action of trespass). 3 Gr. (N. J.) 455.

— (contract for the purchase of stock on, when illegal). 6 Paige (N. Y.) 124.

TIME AFORESAID, (in a sheriff's deed). 101 Mass. 409.

TIME, APT, (equivalent to "fit" or "suitable time"). 74 N. C. 383, 384.

TIME, AT THAT, (in a will). 12 East 603.

TIME-BARGAINS.—These are (in effect) bargains to pay differences only in purchases and sales on the stock exchange and other exchanges, and are illegal. *See* OPTION; PUTS AND CALLS; WAGER.

TIME BEING, (in a charter). 1 Harr. & G. (Md.) 327; 1 Barn. & C. 492, 499, 609; 2 Dowl. & Ry. 770; 3 *Id.* 82; 4 East 26.

— (in a will). 1 Vern. & L. 29.

TIME, EXTENSION OF, (when discharges the surety). 14 Pet. (U. S.) 201; 13 Wend. (N. Y.) 375.

TIME IMMEMORIAL, (in a declaration). Cowp. 86.

TIME OF EXECUTING MY LAST WILL, (in a will). 60 Barb. (N. Y.) 163.

TIME OF THE BANKRUPTCY, (in United States bankruptcy act). 7 Ben. (U. S.) 238.

TIME OF THE PLEA PLEADED, (in a plea). 3 T. R. 186.

TIME OUT OF MIND.—*See* MEMORY, TIME OF.

TIME POLICY.—*See* POLICY OF ASSURANCE, § 3.

By Stat. 30 and 31 Vict. c. 23, § 8, no policy of marine insurance may be made for any time exceeding twelve months, and any policy made for a longer period is void.

TIME, REASONABLE, (what is, a question of law). 2 Cai. (N. Y.) 369; 4 Cow. (N. Y.) 743; 7 *Id.* 705.

TIME, REASONABLE, (for tender of deed under contract). 5 Mass. 494.

— (within which to sue a note). Coxe (N. J.) 86.

TIMES, AT ALL, (covenant in a lease to repair). 7 Taunt. 385.

TIMES HEREFTER, AT ALL, (in a bond). 2 Barn. & Ald. 431, 437.

TIMOCRACY.—An aristocracy of property.

Timores vani sunt æstimandi qui non cadunt in constantem virum (7 Co. 17): Fears which do not assail a resolute man are to be accounted vain.

TINBOUNDING is a custom regulating the manner in which tin is obtained from waste land, or land which has formerly been waste land, within certain districts in Cornwall and Devon. (Bain. M. & M. 146 *et seq.*) The custom is described in the leading case on the subject as follows: "Any person may enter on the waste land of another, and may mark out by four corner boundaries a certain area; a written description of the plot of land so marked out with metes and bounds, and the name of the person, is recorded in the local Stannaries Court, and is proclaimed on three successive court-days. If no objection is sustained by any other person, the court awards a writ to the bailiff to deliver possession of the said 'bounds of tin-work' to the 'bounder,' who thereupon has the exclusive right to search for, dig, and take for his own use, all tin and tin-ore within the enclosed limits, paying as a royalty to the owner of the waste a certain proportion of the produce under the name of toll-tin." (Rogers v. Brenton, 10 Q. B. 26, cited in *Elt. Com.* 113.) The right of tin-bounding is not a right of common (*see* COMMON), but is an interest in land, and, in Devonshire, a corporeal hereditament. (*Elt. Com.* 114.) In Cornwall tin bounds are personal estate. Bain. M. & M. 150. *See* STANNARIES.

TINEL LE ROY.—The king's hall, wherein his servants used to dine and sup. 13 Rich. II. st. 1, c. 3.

TINEMAN, or TIENMAN.—A petty officer in the forest, who had the care of vert and venison at night, and other servile duties.—*Cowell.*

TINET.—Brushwood and thorns.—*Cowell.*

TINEWALD.—The ancient parliament or annual convention of the people in the Isle of Man.

TINKERMEN.—Fishermen who destroyed the young fry on the river Thames, by nets and unlawful engines.—*Cowell.*

TINPENNY.—A tribute paid for the liberty of digging in tin mines.—*Cowell.*

TINSEL OF THE FEU.—The loss of an estate held in feu in Scotland, from allowing two years' feu-duty to remain unpaid.—*Belt Dict.*

TIPPLING-HOUSE, (in liquor act). 47 Ill. 327, 370.

TIPSTAFF.—Tipstaves are officers attached to the lord chancellor and master of the rolls, and to the Queen's Bench Division of the High Court. Since the abolition of imprisonment on mesne process, the functions of these officials have been confined to arresting persons guilty of contempt of court, except in the Queen's Bench Division, where the tipstaff also has charge of any prisoner brought before the court, or committed by the court, in the exercise of its criminal jurisdiction. Second Report Legal Dep. Comm. (1874), 20; Arch. Pr. 18; Stat. 25 and 26 Vict. c. 104.

TISRI.—The first Hebrew month of the civil year, and the seventh of the ecclesiastical, answering to a part of our September and a part of October.—*Wharton*.

TITHE COMMISSIONERS FOR ENGLAND AND WALES.—This board is consolidated with that of the inclosure commissioners and that of the copyhold commissioners. (14 and 15 Vict. c. 53; continued by 21 and 22 Vict. c. 53. See 25 and 26 Vict. c. 72.)—*Wharton*.

TITHE-FREE.—Exempted from the payment of tithes.

TITHER.—One who gathers tithes.

TITHES.—

§ 1. Payments due by the inhabitants of a parish for the support of the parish church, and generally payable to the parson of the parish. In extra-parochial places the king is entitled to the tithes. (1 Bl. Com. 284; Phillim. Ecc. L. 1487; Burt. Comp. R. P. § 1173 *et seq.*) Tithes payable to a rector are called "rectorial tithes," those payable to a vicar are "vicarial tithes," and those payable to a lay person are "lay tithes," the last belong to the class of incorporeal hereditaments. (1 Bl. Com. 387; 2 *Id.* 24 See IMPROPRIATION.) As to exemptions from tithes, see DE NON DECIMANDO; MODUS; REAL COMPOSITION.

§ 2. The different kinds.—Originally tithes were paid in kind, and consisted of the tenth part of all yearly or periodical profits of certain descriptions, tithes being divisible into predial, mixed and personal. Predial tithes (so called from Latin *predium*, a farm), were profits arising immediately from the soil, e. g. corn, grass, &c. Mixed tithes are those arising from animals deriving their nutriment from the soil, e. g. tithes of wool, milk, &c. Personal tithes are those arising entirely from the personal industry of man; these last exist only in a few instances, as in the case of fish caught in the sea, or by special custom for fish caught in rivers. Tithes payable in respect of corn-mills were personal tithes, but they have been commuted (*infra* § 4). Tithes of mineral may also be payable by custom. 2 Bl. Com. 24, n. (9); Burt. Comp. R. P. § 1174.

§ 3. Great—Small.—Tithes were also

divided into (1) great tithes, comprehending the tithes of corn, peas, beans, hay and wood; and (2) small (or privy) tithes, which included all other kinds of tithes. The distinction is important, because vicars are frequently endowed with small tithes only. 2 Bl. Com. 24, n. (9); 2 Steph. Com. 726; Phillim. Ecc. L. 1485.

§ 4. Commutation.—Tithes have now ceased to be paid in kind, except in a very few instances, for by a series of voluntary agreements and compulsory awards made under the Tithe Commutation Acts, (Stats. 6 and 7 Will. IV. c. 71, to 23 and 24 Vict. c. 93,) a rent-charge varying with the price of corn has been substituted for almost all tithes, whether payable in kind or under a modus or composition. (Phillim. Ecc. L. 1504. See RENT, § 9.) Mineral tithes, tithes of fish and other personal tithes (except mill-tithes) are not liable to compulsory commutation. Stats. 6 and 7 Will. IV. § 90; 2 and 3 Vict. c. 62, § 9.

§ 5. Merger.—Tithe rent-charges do not merge in the lands out of which they are payable by mere unity of ownership; but the owner may, by deed or declaration approved by the tithe commissioners, cause a merger to take place. Phillim. Ecc. L. 1552; see the acts above referred to.

TITHES, OBLATIONS AND OBVENTIONS, (in a grant). 8 Price 39.

TITHING.—A local division or district forming part of a hundred (*q. v.*), and is so called because every tithing formerly consisted of ten freeholders with their families. 1 Bl. Com. 114. See *Mauwer*; *Freijplege*, *passim*. See, also, FRANKPLEDGE.

TITHING-MAN.—A peace officer, an under constable.

TITHING-PENNY.—See TEDING-PENNY.

TITHINGS AND TOWNS, (synonymous with "vills"). 1 Bl. Com. 114.

TITLE.—**NORMAN-FRENCH**: *title*; (Britt 86 b, 121 a); from Latin, *titulus*—a label, hence a name, pretext or motive, and then a cause or basis of acquiring a right. (Dirksen Man. Lat. s. v.) The word was chiefly used in Roman law to denote an equitable right to property which was capable of being developed by usucapion into a complete right of ownership. (Dig. xxix. 4, fr. 80; 3 Sav. Syst. 37.; Hunt. Rom. Law 119. As to the exploded doctrine of *titulus* and *modus acquirendi*, see Aust. Jur. 995; Holtz h. 546.) From this is derived the common definition of title as a mode of acquisition, the *titulus* in Roman law not being considered a right, but only the foundation of a right.

§ 1. In the primary sense of the word, a title is a right. (Co. Litt. 345 b; Vin. Abr. Title, C. 1.) Thus a title of presentation is the right to present to a benefice. (Co. Litt. 120 a., see NEXT PRESENTATION.) This use of the word, however, is comparatively rare, and generally "title" means a right to property considered with reference either to the manner in which it has

been acquired, or to its capacity of being effectively transferred.

In this sense of the word, titles are of the following kinds—

§ 2. With reference to the modes by which they are acquired, titles are of two kinds, namely: (1) "original," where the person entitled does not take with reference to any predecessor; as in the case of title by occupancy, by capture, by invention, (patent, copyright, trade-mark, &c.,) and by creation (as where the crown grants a peerage) (Co. Litt. 16a); and (2) "derivative," where the person entitled takes the place of a predecessor; this latter class is divisible into (a) title by the lawful and voluntary act of one or both of the parties; *e. g.* title by conveyance, gift, devise, bequest, &c.; in the case of realty this is called "title by purchase;" (b) title by operation or act of the law, including title by descent, intestacy, succession, survivorship, escheat, forfeiture, marriage, dower, curtesy, limitation, prescription, bankruptcy, &c.; and (c) title by wrong or tort, which occurs in the case of wrongful possession, abatement, disseisin, intrusion, forcement, usurpation, and purpresture. (Co. Litt. 3b, 18b; 2 Bl. Com. 200 *et seq.*) This last kind of title differs from the others in being liable to be defeated by the person rightfully entitled, until the title of the wrongdoer has become absolute by lapse of time (*see* LIMITATION, § 6); subject to this, a title by wrong is always deemed to be the most extensive right which the subject-matter admits of; thus a disseisor of land is seised of an estate in fee-simple by wrong. Wms. Seis. 7.

§ 3. Title to land.—With reference to their capacity of being effectually transferred, titles to land are of various kinds. Thus, a marketable title is one which goes back forty years; *i. e.* the vendor must show a chain or transmission of title, by conveyance, descent or other lawful means, from his predecessor or predecessors, commencing at least forty years ago. A safe holding title is one resting on the undisturbed possession of the vendor for twenty years adversely to persons not under disability. (Greenw. Conv. 15. As to title to advowsons, *see* Wms. Real Prop. 448.)

Where a person agrees to sell land without making any stipulation as to the title, he must show a marketable title. In almost all cases, however, the contract of sale stipulates that the title shall commence at a more recent date than forty years. In any case, the conveyance or other document with which the title commences is called the "root of title;" (Dart Vend. 293–296; 1 Jarm. Conv. 62. Where the first document is a will, the root of title seems, strictly speaking, to be the fact of the seisin of the testator, because the will does not prove that the land belonged to him. *Ib.*;) and if the vendor shows that he has the title which he is bound to prove, he is said to show a good title.

§ 4. The English Vendor and Purchaser Act, 1874, and the Conveyancing Act, 1881, contain a number of provisions similar to those usually inserted in ordinary contracts for sale of real property and leaseholds, so that a person who enters into an open contract now runs less risk of failing to show a good title than formerly. But these provisions are obviously inadequate to meet special defects.

§ 5. Under the English Land Transfer Act, 1875, a person entitled to land may prove and register either (1) an absolute title, being a title good against all the world (except incumbrancers and *cestuis que trust*, if any); or (2) a qualified title, being a title subject to specified reservations; or (3) a possessory title, being a title subject to all estates, rights and interests existing at the time of registration. § 5 *et seq.* *See* LAND REGISTRIES.

§ 6. The investigation of titles is one of the principal branches of conveyancing (*q. v.*); and in that practice the word "title" has acquired the sense of "history" rather than of "right." Thus, we speak of an abstract of title (*see* ABSTRACT OF TITLE), and of investigating a title, and describe a document as forming part of the title to property.

§ 7. "Title" formerly had the technical sense of a right to avoid an estate by entry, as opposed to the remedy by action. Thus, if A. conveyed land to B. upon condition not to alien it in mortmain, and B. broke the condition, A. was said to have a title of entry, or title of mortmain; but he could not bring an action, and therefore had no right in the technical sense. 8 Co. 153 b; Co. Litt. 252 b, 345 b. *See* RIGHT OF ENTRY, § 3.

§ 8. Titles of ordination.—In ecclesiastical law "title" signifies (1) a cause for which a person might be ordained. The most common causes of ordination are either a presentation to a vacant benefice or the possession of some source of income. Hence, title signifies (2) a presentation to a benefice, (3) the church or living to

which the minister was presented, and (4) a source of income, *e. g.* a pension. (Gibbs. Cod. 140, 1441 *et seq.*; 2 Steph. Com. 661.) In the Roman Catholic Church, titles or *tituli* are the churches in and near Rome which are assigned to cardinals. 1 Holtz. Encycl. 465.

§ 9. **Of honor and dignity.**—"Title" also signifies an appellation or address indicative of honor or dignity. Such titles are to a certain extent dependent on courtesy. Thus, no person can compel another to address or describe him by his title; but, so far as their use by the person himself is concerned, titles are matters of right, and, as it were, of property, and therefore, no person who cannot show a legal right to it, is permitted to use a title of dignity or honor on any public occasion. (*See Keet v. Smith*, 1 P. D. 78, where it was decided that "reverend" is not a title of honor or dignity.) Some titles are hereditary and descend in fee-simple or in tail, according to the nature of their creation. Co. Litt. 16a; Seld. Tit. Hon.; Mad. Bar. Ang.; 2 Bl. Com. 216. *See* DIGNITY.

§ 10. **Of action, &c.**—Hence "title" signifies a description. Thus, in procedure, every action, petition or other proceeding, has a title, which consists of the name of the court in which it is pending, the names of the parties, &c.; administration actions are further distinguished by the name of the deceased person whose estate is being administered. Every pleading, summons, affidavit, &c., commences with the title. In many cases it is sufficient to give what is called the "short title" of an action, namely, the court, the reference to the record, and the surnames of the first plaintiff and the first defendant.

§ 11. **Of a patent.**—The title of a patent is the short description of the invention, which is copied in the letters-patent from the inventor's petition, *e. g.* "a new and improved method of drying and preparing malt." Johns. Pat. 90. *See* DISCLAIMER, § 2; PATENT.

TITLE, (defined). 73 N. Y. 452, 456; 2 Bl. Com. 195.

—— (mortgagor cannot dispute). 5 Halst. (N. J.) 102.

—— (a submission of to arbitration). 11 Conn. 249.

—— (of an affidavit, embraces what). 5 Sandf. (N. Y.) 657; 10 N. Y. Leg. Obs. 339.

—— (contract to convey). 16 Me. 104; 2 Johns. (N. Y.) 609; 10 *Id.* 266; 11 *Id.* 525.

—— (in an insurance policy). 24 Minn. 315.

—— (in a statute). 33 Conn. 156.

TITLE AND INTEREST IN FACTORY AND MILLS, (in a will). 13 Bush (Ky.) 111.

TITLE BY ACCESSION AND SPECIFICATION, (defined). 19 Am. Dec. 104.

TITLE, COVENANT FOR, (same as covenant for right to convey). Com. L. & T. 176.

TITLE-DEEDS.—

§ 1. Title-deeds, "though movable articles, are not, strictly speaking, chattels. They have been called the 'sinews of the land,' (Co. Litt. 6a,) and are so closely connected with it that they will pass, on a conveyance of the land, without being expressly mentioned. the property in the deeds passes out of the vendor to the purchaser simply by the grant of the land itself. In like manner a devise of lands by will entitles the devisee to the possession of the deeds; and if a tenant in fee-simple should die intestate, the title deeds of his lands will descend along with them to his heir-at-law." 1 Wms. Pers. Prop. 10.

§ 2. But where a vendor of lands has other lands to which the deeds relate, or retains any legal interest in the lands conveyed, he has a right to keep the deeds. (*Id.*) The purchaser, however, is entitled to a covenant for the production of the deeds whenever required in support of his title, if the vendor can give such a covenant. (Wms. Real Prop. 464.) In the case of sales of land after the 31st of December, 1831, a purchaser will be entitled to a written acknowledgment of his right to production of the deeds, in lieu of, but with the same effect as, an ordinary covenant for production; and if he requires attested copies of the title-deeds retained by the vendor, he will have to bear the expense of making them.

§ 3. A tenant for life, or for any greater estate, is entitled to the possession of the title-deeds of the land, but he must not injure or part with them. Wms. Pers. Prop. 12. *See* MUNIMENTS.

TITLE IN FEE-SIMPLE SUCH AS THE STATE MAKES, (in a bond to make). 3 Bibb (Ky.) 317.

TITLE, LAWFUL, (means a perfect title with general covenant of warranty). 1 Blackf. (Ind.) 379.

TITLE OF A CAUSE.—*See* TITLE, § 10.

TITLE OF A PUBLIC STATUTE, (misrecital in). 3 Cal. (N. Y.) 41.

TITLE OF A STATUTE, (is not part of a law). 1 W. Bl. 95; 6 Mod. 62.

—— (how interpreted). 2 Bail. (S. C.) 334
7 Wheel. Am. C. L. 295.

TITLE OF ENTRY.—See **TITLE**, § 7.

TITLE TO LAND, (defined). 34 Cal. 365.

—— (action to establish). 14 Ch. D. 492.

—— (in act concerning justices of the peace). 6 Hill (N. Y.) 537.

TITLE TO LANDS, DOCUMENT OF.—By 24 and 25 Vict. c. 96, "Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, obliterate, or conceal the whole or any part of any document of title to lands shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three (now five) years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement." § 28.

The term "document of title to lands," includes any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of real estate. § 1.

TITLES (ECCELESIASTICAL).—By the Act 14 and 15 Vict. c. 60, the assumption of the title of archbishop or bishop of a pretended province or diocese, or archbishop or bishop of a city, place, or territory, or dean of any pretended deanery in England or Ireland, not being the see, province, or diocese of an archbishop or bishop, or deanery of any dean recognized by law, was prohibited under penalties. This act has been repealed by the 34 and 35 Vict. c. 53. —*Wharton*.

TITULARS OF ERECTION.—See **LORDS OF ERECTION**.

To, (may be either inclusive or exclusive). 5 East 256; Stark. Cr. Pl. 66, n. (n.)

—— (used to express a boundary). 48 N. H. 491.

—— (in a grant). 13 Me. 198.

To A., (in a will). Doug. 759.

To A. AND THE HEIRS OF HIS BODY, (is equivalent to "to A. for life, remainder to the heirs of his body"). 2 W. Bl. 723, 732.

To A GIVEN POINT, (in railroad charter). 52 Ga. 244.

To A STREAM, (in a deed). 3 Sumn. (U. S.) 170.

To ACCOUNT, (in a contract). 100 Mass. 233.

To AND AMONG, (in a will, as creating tenancy in common). 1 Russ. & G. (Nov. Sc.) 198.

To AND FROM, (in a statute). Burr. 376.

To ARRIVE, (in contract of sale). 23 Hun (N. Y.) 242; 4 Robt. (N. Y.) 179.

To BE, (in a deed). 6 Cow. (N. Y.) 716, 719.

To BE BEGOTTEN, (equivalent to "begotten"). 2 P. Wms. 33.

—— (in a will). 1 Mau. & Sel. 124.

To BE EQUALLY DIVIDED BETWEEN THEM, (in a deed). 2 Ves. Sr. 252.

To COIN MONEY, (issue of treasury note not exercise of power). 22 Ind. 282, 306; 2 Duv. (Ky.) 20.

To DIRECT PRECEPTS, (defined). 110b. 65.

To DO ALL OTHER ACTS, (in power of attorney). 8 Wend. (N. Y.) 494.

To GIVE HIS VOTE, (in a statute). Willberf. Stat. L. 250.

TO HAVE AND TO HOLD.—The words in a conveyance which show the estate intended to be conveyed. Thus, in a conveyance of land in fee-simple, the grant is to "A. and his heirs to have and to hold the said [land] unto and to the use of the said A., his heirs and assigns for ever." See Wms. Real Prop. 198.

Strictly speaking, however, the words "to have" denote the estate to be taken, while the words "to hold" signify that it is to be held of some superior lord, *i. e.* by way of tenure (*q. v.*) The former clause is called the "*habendum*," the latter, the "*tenendum*." Co. Litt. 6a.

To PRINT, (defined). 7 Otto (U. S.) 367.

To SETTLE, (in a promise in writing). 2 Miles (Pa.) 1.

To SUCH CHILD OR CHILDREN, IF MORE THAN ONE, AS A. MAY HAPPEN TO BE ENCRINTE BY ME, (an illegitimate child cannot take under). 17 Ves. 528.

To SUE, (defined). 3 Barn. & C. 178, 183.

To THE BANK, (in a deed). 3 Sumn. (U. S.) 178.

To THE CITY, (in charter of a turnpike company). 10 Johns. (N. Y.) 392.

To THE ROAD, (in a deed). 68 Me. 371.

To THE SAID A. C., (in a will). 8 Com. Dig. 476.

To THE TWO OLDEST CHILDREN, (in a will). 3 Pick. (Mass.) 213.

To THEM, (in a will). 9 Watts (Pa.) 351, 352.

To USE AND IMPROVE, (in a will). 2 Root (Conn.) 533.

TO WIT.—That is to say; namely; scilicet; videlicet.

To WIT, (office of). 9 Minn. 314, 317.

TOALIA.—A towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation.—*Cowell*.

TOBACCO, GRANULATED, (in internal revenue laws). 1 Hughes (U. S.) 326.

TOFT.—

§ 1. "When land is built upon, it is a messuage, and, if the building afterwards fall to decay, yet it shall not have the name of land, although there be nothing in substance left but the land, but it shall be called a 'toft,' which is a name superior to land, and inferior to messuage; and this name it shall have in respect of the dignity which it once bore." Plowd. 170, cited in 2 Broom & II. Com. 17, n. (i).

§ 2. The term "toft" is specially applied to ancient tenements within a parish or other district, the owners or occupiers of which are entitled to rights of common or commonable rights over land situate in the parish. Cooke Incl. 48; General Inclosure Act, 1845, § 53. See **ANCIENT MESSUAGES**; **LAMMAS LANDS**.

TOFTMAN.—The owner or possessor of a toft.

TOGATI.—Roman advocates.

TOKEN.—(1) A sign of the existence of a fact. (2) Private money.

TOKEN, (defined). 3 Harr. (N. J.) 181.
 ——— (what is). 13 Wend. (N. Y.) 319.
 ——— (in a statute). 50 Ind. 473, 476.

TOLERATION ACT.—The Stat. 1 W. and M. st. 1, c. 18, confirmed by 10 Anne c. 2, by which all persons dissenting from the Church of England (except Papists and persons denying the Trinity) were relieved from such of the acts against Nonconformists as prevented their assembling for religious worship according to their own forms, or otherwise restrained their religious liberty, on condition of their taking the oaths of allegiance and supremacy, and subscribing a declaration against transubstantiation; and in the case of dissenting ministers, subscribing also to certain of the Thirty-nine Articles. The clause of this act, which excepted persons denying the Trinity from the benefits of its enactments, was repealed by 53 Geo. III. c. 160. 4 Broom & H. Com. 67.

TOLL.—

§ 1. A toll is a payment for passing over or using a bridge, road, ferry, railway, market, port, anchorage, &c. Frequently the right to demand tolls forms part of a franchise (*q. v.*), as in the case of ferries, markets, ports, &c. Turnpike, harbor and railway tolls are generally created by statute. As to railway tolls, *see* Hodg. Railw. 456 *et seq.*

§ 2. **Toll traverse.**—Toll traverse is a sum payable for passing over the private soil of another, or over a private road, bridge, ferry, or the like.

§ 3. **Toll thorough.**—Toll thorough is a sum payable for passing over the public highway; to support a claim for such a toll (which is a franchise) a consideration must be shown, *e. g.* repairs to the highway by the owner of the franchise. Shelf. R. P. Stat. 36; 2 Bl. Com. 38; Co. Litt. 114.

§ 4. A right of distress is incident to every toll, but the distress cannot be sold except in the case of turnpike tolls. (Shelf. R. P. Stat. 36. *See* PRESCRIPTION; RANKNESS; STALLAGE.) As to "toll" in the sense of taking away, *see* DESCENT CAST.

TOLL-HOUSES.—On turnpike roads, when such houses become "useless and no longer required for the purposes of the road" within the meaning of the Stat. 4 Geo. IV. c. 95, § 57, they must be pulled down and the materials removed; and the owner of the land adjoining may have a *mandamus* against the turnpike road trustees to compel them to pull them down, &c. Reg. v. Greenlaw Road Trustees, 4 Q. B. D. 447.

TOLL-THOROUGH.—*See* TOLL, § 3.

TOLL-TRAVERSE, or **TRAVERS**
 —*See* TOLL, § 2.

TOLLAGE.—Any custom or imposition.

TOLLBOOTH.—A prison, a custom-house, an exchange; also the place where goods are weighed.

TOLLDISH.—A vessel by which the toll of corn for grinding is measured.

TOLLER.—One who collects tribute or taxes.

TOLLGATHERER.—The officer who takes or collects toll.

TOLLS, (defined). 41 Mich. 274; 1 Keyes (N. Y.) 72; 5 East 7.

——— (what are). 12 East 342.
 ——— (assumpsit will lie for). 4 Halst. (N. J.) 33; 3 Wheel. Am. C. L. 472.
 ——— (debt lies for). 2 Greenl. (Me.) 404.
 ——— (travelers on a turnpike when liable to pay). 2 Root (Conn.) 524.
 ——— (for which a lien exists). L. R. 5 Ex. 63.
 ——— (place of payment). 10 Pet. (U. S.) 381.
 ——— (in a contract). 29 Barb. (N. Y.) 589.
 ——— (in railway act). 3 Q. B. D. 134, 141.

TOLSESTER.—An old excise; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale.—*Cowell.*

TOLSEY.—The same as tollbooth (*q. v.*) Also, a place where merchants meet; a local tribunal for small civil causes held at the Guildhall, Bristol.

TOLT.—A writ whereby a cause depending in a court-baron was taken and removed into a county court.—*O. N. B. 4.*

TOLTA.—Wrong; rapine; extortion.—*Cowell.*

TOMBSTONES.—

§ 1. Tombstones in churchyards, it seems, can only be erected, in England, with the consent of the incumbent, and he may refuse to allow objectionable inscriptions on tombs. Tombstones in the body of the church can only be erected by leave of the ordinary, given by a faculty, though it seems that the consent of the incumbent is usually sufficient, or that of the rector, if the stone is to be erected in the chancel. A tombstone, when properly erected, does not vest in the incumbent, although annexed to the church or churchyard, the freehold of which is in him; therefore the person who set it up, or the heirs of the deceased, have an action of trespass against any one who defaces or removes it. Phillim. Ecc. L. 880 *et seq.*; Keet v. Smith, 1 P. D. 73.

§ 2. Gifts by will for the erection or maintenance of tombstones in churchyards are void, if unlimited in point of time, being contrary to the

rule against perpetuities; gifts for the maintenance of tombstones or monuments forming part of the fabric of a church are valid because they are for the public benefit, and are therefore charitable within the equity of the Stat. 43 Eliz. c. 4. See BURIAL; CHARITY; CHURCHYARD.

TON.—Twenty hundred-weight of one hundred and twelve pounds avoirdupois each.

TON, (in a contract). 3 Wall. Jr. (U. S.) 46; 9 Paige (N. Y.) 188; 29 Pa. St. 27.
 — (in a mortgage). 7 Metc. (Mass.) 354.

TONNAGE was anciently an English duty on imported wines, imposed by parliament, in addition to prisage (*q. v.*) (2 Steph. Com. 561.) The present duties on wines are regulated by the Customs Acts.

TONNAGE, (in an insurance policy). 103 Mass. 405; 16 Hun (N. Y.) 344.

TONNAGE DUTY, (defined). 4 Otto (U. S.) 238; 62 Pa. St. 286, 297.

— (what is). 6 Wall. (U. S.) 31; 3 Strobb. (S. C.) 594.

— (what is not). 45 Iowa 196.
 — (in United States constitution). 6 Biss. (U. S.) 505; 5 Otto (U. S.) 80.

TONNAGE-RENT.—When the rent reserved by a mining lease or the like consists of a royalty on every ton of minerals gotten in the mine, it is often called a "tonnage-rent." There is generally a dead rent in addition. See RENT, § 6.

TONNAGE TAX, (defined). 6 Biss. (U. S.) 505, 509; 20 Wall. (U. S.) 577.

TONTINE.—A life annuity, or a loan raised on life annuities, with benefit of survivorship. The term originated from the circumstance that Lorenzo Tonti, an Italian, invented this kind of security in the seventeenth century, when the governments of Europe had some difficulty in raising money in consequence of the wars of Louis XIV., who first adopted the plan in France. A loan was obtained from several individuals on the grant of an annuity to each of them, on the understanding that, as deaths occurred, the annuities should continue payable to the survivors, and that the last survivor should take the whole. This scheme was adopted by other nations as well as France, but was not introduced into England until subsequently, and then only for the purpose of raising money to carry private speculations into effect, which could not be satisfactorily accomplished without a combination of capital. As to the formation of such a scheme, see Stone Ben. Build. Soc. 78.

TOOK AND RECEIVED, (in an indictment). Stark. Cr. Pl. 165.

TOOK THE OATH IN SUCH CASE REQUIRED BY ACT OF CONGRESS, (in certificate of naturalization). 5 Leigh (Va.) 743.

TOOK UP, (as applied to land, defined). 6 Munf. (Va.) 416.

TOOL.—A mechanical implement. As to what is a tool within statutes exempting mechanics' tools from execution, see the cases referred to under TOOLS.

TOOL, (defined). 124 Mass. 418, 420.
TOOL OR INSTRUMENT, (in a statute). 2 W. Bl. 807.

TOOLS, (in attachment act). 2 R. I. 454; 29 Vt. 248.

— (in statute respecting exemptions from execution). 4 Conn. 450; 28 Me. 160; 2 Allen (Mass.) 395; 5 Mass. 313; 13 Id. 82; 2 Pick. (Mass.) 80; 10 Id. 423; 3 Abb. (N. Y.) Pr. 466; 4 Pa. St. 471.

TOOLS AND INSTRUMENTS, (in exemption law). 2 Minn. 89, 105.

TOOLS, COMMON, (in exemption act, does not include a lawyer's library). 20 Ga. 596.

TOOLS, EXPORTATION OF.—This was formerly a criminal offense in England, but it is no longer so, since the restrictions upon trade are removed. 4 Steph. Com. (7 edit.) 267 n.

TOOLS, MECHANICAL, (dentists' tools are). 17 Mich. 332.

TOOLS, NECESSARY, (in act respecting exemptions from execution). 2 Whart. (Pa.) 26.

TOOLS OF A MECHANIC, (instruments of a dentist are not). 31 Miss. 567.

TOOLS OF HIS OCCUPATION, (in exemption law). 18 N. H. 196.

TOOLS, WORKING, (in act respecting exemptions from execution). 17 How. (N. Y.) Pr. 80.

TORT.—**NORMAN-FRENCH**: *fort*, a wrong; from Latin, *tortus*, twisted. Co. Litt. 158b.

§ 1. In its original and most general sense, "tort" is any wrong—as in the phrase "*executor de son tort*." See EXECUTOR, § 4.

§ 2. More commonly, however, "tort" signifies an act which gives rise to a right of action, being a wrongful act or injury consisting in the infringement of a right created otherwise than by a contract.* Torts are divisible into three classes, according as they consist in the infringement of a *jus in rem*, or the breach of a duty imposed by law on a person, either towards another person or towards the public.

§ 3. The first class includes (1) torts to the body of a person—such as assault, battery, nuisance; or to his reputation—such as libel, slander, malicious prosecution; or to his liberty—as in the case of false imprisonment and malicious arrest; (2) torts

* See Bryant v. Herbert, 3 C. P. D. 189, 389; Fleming v. M. & S. Rail. Co., 4 Q. B. D. 81. As to torts generally, see the works of Addison and

Underhill; Broom Com. L. 651 *et seq.* As to the place of torts in a scientific system, see Hunt. Rom. Law xxxvi.

to real property—such as ouster, trespass, nuisance, waste, subtraction, disturbance; (3) torts to personal property, consisting (a) in the unlawful taking or detaining of or damage to corporeal personal property or chattels (*see* DETINUE; REPLEVIN; TROVER); or (b) in the infringement of a right to a patent, trade-mark, copyright, &c., (*see* INFRINGEMENT; PIRACY, § 1); (4) slander of title; (5) deprivation of service and consortium. *See* MASTER AND SERVANT, § 3; PER QUOD.

§ 4. **Fraud and negligence.**—The second class includes deceit and fraud (*q. v.*), and negligence in the discharge of a private duty. Thus, if A., a stage-coach proprietor, contracts with B. to carry his servant C., and, in performing his contract, is guilty of negligence which causes bodily hurt to C., and consequent damage, by loss of his services, to his master; then A. may be sued by B. for breach of contract, and by C. for negligence, *i. e.* for a tort. So, if a physician is guilty of negligence in treating a patient, he may be sued either for breach of contract or for tort.* This kind of tort is called a “tort arising out of contract,” in opposition to a pure tort, *e. g.* an assault. *Berringer v. G. E. R.*, 4 C. P. D. 163.

§ 5. **Special damage by public nuisance, &c.**—The third class includes those cases in which special damage is caused to an individual by the breach of a duty to the public, whether the breach consist of malfeasance, nonfeasance, or misfeasance. The principal instances of this class of torts fall under the heads of negligence and nuisance. Thus, if a person does something, which is not only a public nuisance, but also causes special damage to an individual, he is liable to that individual for a tort. *Broom* 657.

§ 6. These divisions are of importance

with reference to the question whether, on the death of the person injured, or of the tortfeasor, his personal representatives can sue or be sued for the tort; the general rule being, that the right to sue, and the liability to be sued, for torts to *property* (including fraud. *Twycross v. Grant*, 4 C. P. D. 40,) passes to the personal representatives of the injured person, or of the tortfeasor, but that in other cases it does not, except where the death of the deceased was caused by the tort. *See* Dic. Part. 314, 402, 481; Stats. 3 and 4 Will. IV. c. 4; 9 and 10 Vict. c. 93. *See, also*, ACTIO PERSONALIS, &c.

§ 7. The distinction between tort and contract is important with reference to the limitation of actions (*q. v.*), and in the law of bankruptcy, claims for damages from torts not being provable. *See* DEBT, § 11; *also*, DAMAGE; DAMNUM SINE INJURIA; INJURY; NEGLIGENCE; QUASI-TORT.

TORT, (defined). 87 N. Y. 390.

Tort a le ley est contrarie (Co. Litt. 158): Tort is contrary to the law.

TORTFEASOR.—NORMAN-FRENCH: *tort*, a wrong, and *feasor* or *fesour*, a doer. Brit. 32b.

A wrongdoer, or one who commits a tort, especially a trespass. Cro. Jac. 383. *See* CONTRIBUTION, § 2; OMNIA PRÆSUMUNTUR, &c.

TORTIOUS.—Wrongful. Formerly certain modes of conveyance (*e. g.* feoffments, fines, &c.,) had the effect of passing not merely the estate of the person making the conveyance, but the whole fee-simple, to the injury of the person really entitled to the fee, and they were hence called “tortious conveyances.” (Litt. § 611; Co. Litt. 271 b, n. (1); 330b, n. (1).) But this operation has been taken away. *See* FEOFFMENT, § 3; FINE, § 9.

*3 Bl. Com. 165; *Broom* 672. At first sight it seems incorrect to make what is apparently a breach of contract equivalent to a tort, and that it would be more accurate to call this kind of injury a “quasi-tort,” as is done by Mr. Underhill (p. 24). It is submitted, however, that the old classification is really correct. It is of course possible for a person who is about to travel by a stage-coach, or to undergo an operation, to stipulate that he shall be carried safely, or that the operation shall be skillfully performed; but not only is this never done ex-

pressly, but the parties do not as a rule even think of such a condition at the time. The duty on the part of the contractor, therefore, is not created by an actual contract, whether express or tacit, but is created by the law, and the breach of it is rightly called a “tort.” The inaccuracy consists in also treating it as a breach of contract; but this is explained by the fact that in English law contracts and quasi-contracts are not distinguished. (*See* QUASI-CONTRACT.) *See, however*, the remarks in Dic. Part. 16 *et seq.*

TORTS, (used in reference to admiralty jurisdiction). 15 Otto (U. S.) 626.

TORTURE.—See **PEINE FORTE ET DURE**; **RACK**.

TORY.—Originally a nickname for the wild Irish in Ulster. Afterwards given to, and adopted by, one of the two great parliamentary parties which have alternately governed Great Britain since the Revolution in 1688. Also, in America, one of the parties during the Revolutionary War, composed of residents of the colonies opposed to American independence.

TOTAL LOSS.—See **Loss**.

TOTAL LOSS, (what is). 4 Cranch (U. S.) 29; 5 Pet. (U. S.) 604; 44 N. Y. 204; 3 Robt. (N. Y.) 528.

— (what is not). 1 Mass. 264, 282.
— (in an insurance policy). 12 Pet. (U. S.) 378; 54 Cal. 422.
— (in bottomry bond). 6 Otto (U. S.) 557.

TOTIDEM VERBIS.—In so many words.

TOTIES QUOTIES.—As often as occasion shall arise.

TOTTED.—A good or separate debt to the crown.—*Cowell*.

Totum præfertur unicuique parti (3 Co. 41): The whole is preferable to any single part.

TOUCH.—In insurance law, to stop at; to stop at a port. If liberty is granted by the policy to *touch*, or to *touch and stay*, at an intermediate port on the passage, the better opinion now is, that the insured may *trade* there, when consistent with the object and the furtherance of the adventure, by breaking bulk, or by discharging and taking in cargo, provided it produces no unnecessary delay, nor enhances nor varies the risk. (8 Kent Com. 814, and cases there cited.) These words were formerly construed more strictly. (1 Arn. Ins. 364).—*Burrill*.

TOUCH AT, (in a policy of insurance). 7 Cranch (U. S.) 31; 1 Pet. C. C. 98.

TOUCH AT ANY PORT, (in a policy of insurance). 1 Esp. 610; 1 Taunt. 454; 3 *Id.* 419.

TOUCH, STAY AND TRADE AT ALL PORTS, (in a policy of insurance). 4 Taunt. 511.

TOUCHING, (in a will). 23 Wend. (N. Y.) 452.

TOUCHING ALL MY TEMPORAL ESTATE, (in a will). 5 T. R. 13.

TOUCHING MY WORLDLY ESTATE, (in a will). 2 Yeates (Pa.) 382; Cowp. 352.

TOUCHING THE QUESTION IN DISPUTE, (in act concerning evidence). 4 Rawle (Pa.) 431.

TOUJOURS ET ENCORE PRESZ.—Always and still ready. The old name of a plea of tender.

TOURN.—The sheriff's tourn or rotation. See **SHERIFF'S TOURN**.

TOUT TEMPS PRIST (always ready) is the Norman-French name for the plea or defense which a defendant sets up when he is sued on a contract for something which he has always been ready and willing to do, if the plaintiff had asked or allowed him to do it. Its effect, if true, is to deprive the plaintiff of his right to damages for the nonfeasance complained of. (See Co. Litt. 33a; Leake Cont. (2 edit.) 858.) For an example, see **TENDER**. See, also, **UNCORE PRIST**.

TOWAGE.—In admiralty law, a towage service is where one vessel is employed to expedite the voyage of another, when nothing more is required than to accelerate her progress, (The Princess Alice, 3 W. Rob. Adm. 140; cited Wms. & B. Adm. Pr. 151, n. (a),) as opposed to a salvage service, which implies danger or loss. (See **SALVAGE**.) A towage service gives a right to remuneration; but although in many cases where salvage has been claimed the court has decreed towage remuneration only, there are comparatively few cases in which suits have been instituted for mere towage. (Wms. & B. Adm. Pr. 152.) Claims for towage remuneration are generally enforced in courts having admiralty jurisdiction. See **ADMIRALTY**; **ACTION**, § 12 *et seq.*

TOWAGE, (distinguished from "salvage"). 2 Low. (U. S.) 501.

TOWAGE SERVICE, (defined). Abb. (U. S.) Adm. 222, 228.

TOWARDS, (in a contract for the discharge of a debt). 5 Cranch (U. S.) 262, 277.

TOWARDS THE SUPPORT, (in a will). 5 Pick. (Mass.) 476.

TOWN.—

§ 1. In the technical sense of the word, a town is a collection of houses, which "hath, or in time past hath had, a church and celebration of divine service, sacraments and burials," but "if a towne be decayed so as no houses remaine, yet it is a towne in law." (Co. Litt. 115b.) Some towns are cities or boroughs, (*q. v.*, and see **MUNICIPAL CORPORATION**.) In the old books, "upland town" seems to mean a town which is neither a city nor a borough. *Id.* 110b. See **VILL**.

§ 2. In the popular sense of the word, a town is a congregation of houses so near

to one another that the inhabitants may fairly be said to dwell together. The word is so used in the pre-emption clause of the English Lands Clauses Act. (*Reg. v. Cottle*, 16 Ad. & E. N. s. 412; *London & S. W. Rail. Co. v. Blackmore*, L. R. 4 H. L. 610. See PRE-EMPTION.) The name of such a town is a matter of reputation. *Collier v. Worth*, 1 Ex. D. 464.

TOWN, (defined). 82 Ill. 119; 46 Iowa 256; 6 Oreg. 378; 6 Daly (N. Y.) 349; 50 Wis. 193; 1 Bl. Com. 114.

—— (includes a city). 24 Ind. 286; 66 Me. 154; 11 Vr. (N. J.) 1; 13 *Id.* 487, 498; 3 R. I. 276.

—— (in a contract includes the town and vicinity). 31 Iowa 20.

—— (equivalent to "township"). 82 Ill. 119; 1 Beas. (N. J.) 299.

—— (not synonymous with "village"). 46 Iowa 256.

—— (when used in popular sense). *Wilberf. Stat. L.* 122.

—— (duty of, to provide for the payment of its bonds). 64 N. Y. 112.

—— (power of, to regulate fishing within its limits). 5 Conn. 391.

—— (boundary of). 48 N. H. 491.

—— (when is not liable for bridge being out of repair). 36 Wis. 108.

—— (grant of land to). 6 Me. 355.

—— (may receive money by bequest to hold in trust). 54 N. H. 18.

—— (control over trees in streets). 81 Ill. 103.

—— (in State constitution). 11 Mass. 430; 50 Wis. 210.

—— (in a contract). 31 Iowa 20.

—— (in a statute). 20 Ark. 561; 87 Ill. 503, 524; 13 Abb. (N. Y.) Pr. 262; 17 Ohio St. 271; 40 Wis. 124; 1 Ex. D. 464, 468; L. R. 4 H. L. 615.

TOWN CHARTERS, (effect of when inconsistent with the provisions of a general law). 72 Ill. 593.

TOWN CLERK.—An officer who manages the public business of a town.

TOWN CLERKS, (in a statute). 5 Mass. 427.

TOWN COLLECTOR.—An officer of a town charged with collecting the township taxes.

TOWN COMMISSIONER.—One of the board of officers in whom, under the laws of some of the States, the management of the business of a town is vested.—*Abbott*.

TOWN CRIER.—An officer in a town whose business it is to make proclamations.

TOWN-HOUSE.—The hall where the public business of a town is transacted.

TOWN MEETING.—An assemblage of the voters of a town to select town officers and discuss other business of the town.

TOWN MEETING, (functions of). 32 Wis. 114.

TOWN ORDERS, (are not negotiable instruments). 56 Me. 315.

TOWN POUND, (defined). 2 Cush. (Mass.) 305.

TOWN-REEVE.—The reeve or chief officer of a town.

TOWN TO WHICH HE BELONGS, (construed). 67 Me. 370, 371.

TOWN-WAY, (how established). 2 Pick. (Mass.) 51.

—— (in a statute). 119 Mass. 356, 357.

TOWNS, (in a statute). 40 Wis. 44.

TOWNS IMPROVEMENT. — The English Towns Improvement Clauses Act, 1847, was passed to consolidate in one act certain provisions usually contained in acts for paving, draining, cleansing, lighting and improving towns. Local acts appointing commissioners for the improvement of towns generally incorporate the provisions of this act, but such acts are now rarely passed, as the provisions of the General Health Acts, the Local Government Acts, the Sanitary Acts, and the Public Health Acts (*see* the various titles) have practically superseded them.

TOWNSHIP.—This word seems to mean a district of land containing a town, and under the same administration as the town itself. Blackstone says, that when a hamlet or other small collection of houses is adjacent to a town, but governed by separate officers, it is, to some purposes in law, looked upon as a distinct township. 1 Bl. Com. 115.

TOWNSHIP, (defined). 27 Ind. 86.

—— (what is). 10 Mich. 125; 1 T. R. 376.

TOWNSHIP EXPENSES, (defined). 36 Mich. 215.

TOWNSHIP TRUSTEE, (duties and liability of). 36 Ind. 346; 33 *Id.* 485.

—— (powers of). 65 N. C. 488.

—— (is overseer of the poor). 57 Ind. 15.

—— (contract made by). 54 Ind. 184.

TOXICAL.—Poisonous; containing poison.

TOXICOLOGY.—The science of poisons. Consult *Christison* or *Taylor on Poisons*.

TRACT, (in a grant). 8 Pet. (U. S.) 472.

—— (sale of land by). 2 Dana (Ky.) 268.

TRADE.—Traffic; commerce; exchange of goods for other goods, or for money. All wholesale trade, all buying in order to sell again by wholesale, may be reduced to three sorts: the home trade, the foreign trade of consumption, and the carrying trade. 2 Sm. Wealth Nat. b. 2, c. v.

Offenses against trade are—(1) Smuggling. (2) Frauds by bankrupts. (3) Cheating. (4) Monopoly.

TRADE, (defined). 1 Sumn. (U. S.) 516. — (what is). 2 Atk. 630; 3 Mod. 813; 1 Price 148.

— (what is not). 31 Miss. 567; 1 Hill (S. C.) 428; 2 Ad. & E. 161; 8 Mod. 211; 11 Id. 110.

— (distinguished from "commerce"). 14 Wend. (N. Y.) 9, 15.

— (implements of, when may be dis-trained for rent). 4 T. R. 565.

— (when implements of, are privileged from distress). Willes 512.

— (good will of). 3 Meriv. 452; 17 Ves. 341; 1 Ves. & B. 505.

— (in a statute). 8 Wheat. (U. S.) 338, 351; 19 Conn. 517; 3 Ex. D. 108, 113.

— (effect of contracts in restraint of). 4 Bibb (Ky.) 486; 8 Mass. 223; 9 Id. 522; 11 Id. 76; 3 Pick. (Mass.) 188; 7 Cow. (N. Y.) 307; 1 Edw. (N. Y.) 604; 21 Wend. (N. Y.) 157, 166; 3 Wheel. Am. C. L. 358; 3 Bing. 322; 7 Id. 735, 740; 2 W. Bl. 856; Cro. Jac. 596; 2 Id. Raym. 1456; 7 Mod. 230; 1 P. Wms. 181; 1 Vern. 307; 17 Ves. 323; 1 Ves. & B. 188; Str. 465; 2 Swanst. 254 n.; Willes 384, 388.

TRADE DOLLAR.—A silver coin of the United States, of the weight of four hundred and twenty grains, troy. Rev. Stat. § 3513.

TRADE, ILLICIT, (in an insurance policy). 11 Mass. 104, 110; 15 Wend. (N. Y.) 9.

TRADE, IN THEIR SAID, (in a covenant). 10 Barn. & C. 849.

TRADE, LAWFUL, (in an insurance policy). 12 Wend. (N. Y.) 463, 467.

TRADE-MARK.—

§ 1. In the most general sense of the words, "trade-mark" denotes any means of showing that a certain trade or occupation is carried on by a particular person or firm, including therefore not only trade-marks in the narrower sense of the word (*infra*, § 2), but also trade-names (*q. v.*) and marks which are not in themselves, or in their origin, distinctive, but become known by custom and reputation as showing that goods or implements of trade are made, sold or employed by a particular person

or firm. Thus colored lines in the hem or fringe of cloth may, by the custom of a particular place or trade, be understood to show that the cloth is made by a particular firm. (Singer, &c., Co. v. Wilson, 2 Ch. D. 441; Orr Ewing v. Johnston, 13 Id. 434.) So, where A. ran a line of omnibuses between two places, B. was restrained by injunction from running on the same line of route omnibuses having upon them such names, words and devices as to form a colorable imitation of the names, words and devices on A.'s omnibuses. Knott v. Morgan, 2 Keen 213. See Use.

§ 2. In the narrower sense of the word, a trade-mark is a distinctive mark or device affixed to or accompanying an article intended for sale for the purpose of indicating that it is manufactured, selected, or sold by a particular person or firm. Thus, a representation of a lion enclosed in a ring, or the *fac simile* of the signature of a person, may be used as trade-marks in connection with a certain kind of goods; but the right to a trade-mark applicable to cloth does not entitle the owner to prevent another trader from applying it to iron or the like. (Lud. & Jenk. 3; Orr Ewing v. Registrar of Trade-Marks, 4 App. Cas. 479.) Trade-marks of this kind must be registered in accordance with the statutory provisions requiring such registration.

§ 3. **Goodwill.**—A trade-mark cannot exist in gross, *i. e.* apart from the goodwill of the business with which it has been connected. Sebast. Tr. M. 180.

§ 4. The right of the owner of a trade-mark in the narrower sense of the word is clear: he is entitled to prevent any one else from applying it, or any device closely resembling it, to goods of the same class as those in connection with which he himself uses it. (As to his remedies, see INFRINGEMENT.) This right is an absolute one, and does not depend on the state of mind of the infringer; A. may *bonâ fide* invent a trade-mark which has already been used by B., but the fact that he never heard of B.'s trade-mark is no defense to proceedings for infringement. (Lud. & Jenk. 73; Edelsten v. Edelsten, 1 De G., J. & S. 199.) Again, where goods are sold under a false trade-mark, "even if the pur-

chaser is told that the goods are the goods of the actual seller, but the imitated mark is upon them, there is ground for interference [by the court], since the goods may be resold bearing the mark, but without the information necessary to correct the statement thereby made." (Sebast. Tr. M. 8, citing *Sykes v. Sykes*, 3 B. & Cr. 541.) From its absolute and negative nature, the right to a trade-mark is frequently called a "property" (*q. v.*) See *Lud. & Jenk. 4*; *Maxwell v. Hogg*, L. R. 2 Ch. 307.

§ 5. The true nature of a trade-mark in the wide sense of the word, *i. e.* of trade marks not capable of registration, is not yet settled. It was formerly considered that the right of the owner of a trade-mark of this kind (*e. g.* a trade-name) was entirely dependent on the question of misrepresentation, so that a person who, without fraud, used a name or mark which had been previously used by another person, could not be made liable for doing so. (*Singer, &c., Co. v. Wilson*, 2 Ch. D. 434.) This doctrine has been recently shaken, but the point is still open. See the judgments of Lords Cairns and Blackburn, same case, 3 App. Cas. 376.

§ 6. There are certain trade-marks which are subject, in England, to special statutes, the most important of which are the Hallamshire Acts, regulating marks on cutlery, and the acts regulating marks on hops, gun barrels and gold and silver plate. *Lud. & Jenk. 77*; Trade-Marks Registration Act, 1875, § 9 *et seq.* See *GOODWILL*; *MERCHANDISE MARKS ACT*; *PUBLICI JURIS*.

TRADE-MARK, (defined). 45 Cal. 467.

— (what is). 21 Cal. 448; 44 Mo. 168; 15 Abb. (N. Y.) Pr. N. s. 1; 49 How. (N. Y.) Pr. 5; 53 *Id.* 453.

— (what is not). 39 Cal. 501; 45 *Id.* 467; 18 How. (N. Y.) Pr. 64; 58 N. Y. 223; 1 Thomp. & C. (N. Y.) 626.

TRADE-MARKS REGISTRATION ACT, 1875.—

§ 1. This is the Stat. 38 and 39 Vict. c. 91, amended by the acts of 1876 and 1877. It provides for the establishment of a register of trade-marks under the superintendence of the commissioners of patents, and for the registration of trade-marks as belonging to particular classes of goods; and for their assignment in connection with the goodwill of the business in which they are used. Registration is substituted for public use as the mode of acquiring the right to a

trade-mark, so that now no one can enforce his right to a trade-mark until it is registered. For the purposes of the act, a trade-mark consists.

(1) Of a name of an individual or firm printed, impressed or woven in some particular and distinctive manner; or (2) of a written signature or copy of a written signature of an individual or firm; or (3) of a distinctive device, mark, heading, label or ticket. (*See Ex parte Stephen*, 3 Ch. D. 659.) There may be added to any one or more of these essential particulars any letters, words or figures. Certain kinds of marks used as trade-marks before the passing of the act may be registered under the act, although not coming within the statutory definition. See generally as to the act, *Sebastian on Trade-Marks*; *Orr Ewing v. Registrar of Trade-Marks*, 4 App. Cas. 479; *Mitchell v. Henry*, 15 Ch. D. 181.

§ 2. The act does not provide for the registration of the color in which a trade-mark is used, and, therefore, the shape of the device alone is considered in deciding whether one trade-mark is like another. *Re Worthington*, 14 Ch. D. 8.

TRADE-NAME.—

§ 1. A trade-name* is a name which by user and reputation has acquired the property of indicating that a certain trade or occupation is carried on by a particular person. (*See GOODWILL*) The name may be that of a person, place or thing, or it may be what is called a "fancy name," (*i. e.* a name having no sense as applied to the particular trade,) or a word invented for the occasion, and having no sense at all. (*Sebastian on Trade-Marks 37.*) It may be applied to goods, (*Ford v. Foster*, L. R. 7 Ch. 611) to a magazine, (*Maxwell v. Hogg*, L. R. 2 Ch. 307; and see *Lud. & Jenk. 56 et seq.*; *Levy v. Walker*, 10 Ch. D. 436; *Massam v. Thorley's Food Co.*, 14 Ch. D. 748,) or any other subject of trade.

§ 2. A trade-name gives the person entitled to use it the right of preventing any other person from using it so as to induce purchasers to believe that his goods are the goods sold or manufactured by the original maker, and thus to injure the latter. Thus, where a firm had obtained a reputation for a particular kind of goods distinguished by the word "Glenfield," which was the name of the place where the goods had originally been manufactured, a person who sold the same kind of goods under the name "Glenfield" was restrained by injunction from so doing,

*The distinction between "trade-mark" and "trade-name" is English, the word "trade-mark" including "trade-name" in American

law; but the doctrine is substantially the same in both countries.

although he had a small manufactory at the place called "Glenfield," because it was apparent on the evidence that he used the word to induce the public to believe that in buying his goods they were buying the goods of the plaintiff, the original manufacturer. *Wotherspoon v. Currie*, L. R. 5 H. L. 508.

As to whether fraud is an essential to make the use of a trade-name actionable, see *TRADE-MARK*, § 5.

TRADE OF MERCHANDISE, (in a bill of lading). 6 Pet. (U. S.) 164.

TRADE OR BUSINESS, (covenant not to exercise). 1 Mau. & Sel. 95.

— (in act respecting exemptions from execution). 103 Mass. 52.

TRADE PRICE, (in a contract to pay at). 109 Mass. 415.

TRADE-UNIONS.—

§ 1. Trade-unions were originally merely friendly societies consisting of artisans, engaged in a particular trade, such as carpenters, bricklayers, &c.; but in course of time they acquired the character of associations for the protection of the interests of workmen against their employers. The principal objects of such societies at the present day are to increase the rate of wages, reduce the hours of labor, and bring about an equal division of work among a large number of workmen by establishing a uniform minimum rate of wages. They attain these objects principally by the legal means of "strikes," i. e. the stoppage of work by all the members until their demands are complied with, and the illegal means of intimidation, rattening, picketing, &c., (*q. v.*) The members are supported during strikes by the funds of the society, which are obtained by weekly subscriptions during periods of work. Many trade-unions are also friendly societies.

§ 2. Formerly trade-unions were not recognized by English law; and, as a general rule, their regulations, being in restraint of trade, were illegal, and incapable of being enforced, (*Davis* 187; *Hornby v. Close*, L. R. Q. B. 153; 36 L. J. M. C. 43;) but, by the Trade-Union Act, 1871, this doctrine was abolished (§§ 2 and 3), and provisions (analogous to those applying to friendly societies (*q. v.*)) are made for the registration of trade-unions, for the regulations to be contained in their rules, and for the appointment of trustees in whom the property of the union is to vest, &c. But no agreements between the members as to the conditions on

which they are to work, or as to the payment of subscriptions or application of the funds, are enforceable in any court of law. § 4; *Rigby v. Connol*, 14 Ch. D. 482.

TRADE-USAGE.—Persons contracting with a knowledge thereof, or under circumstances which impute to them a knowledge thereof, are bound thereby; and such a usage may be annexed to the contract by extrinsic evidence, provided the contract be not thereby varied.

TRADER.—Traders are subject to special provisions of the English bankruptcy law; thus, the time allowed for compliance with a debtor's summons (*q. v.*) is shorter in the case of a trader than in the case of ordinary persons, and the doctrine of reputed ownership (*q. v.*) is confined to traders. "Trader," within the bankruptcy law, includes not only persons carrying on trades in the ordinary sense, but also bankers, ship-owners, and many similar classes, enumerated in the 1st schedule to the Bankruptcy Act, 1869. See *In re Cleland*, L. R. 2 Ch. 466.

TRADER, (defined). 80 N. C. 479.

— (who is not). 2 Low. (U. S.) 69; 7 Bankr. Reg. 126; 11 East 274.

— (distinguished from "tradesman"). 16 Bankr. Reg. 215.

— (in bankrupt law). 72 Me. 491.

TRADESMAN, (defined). 14 Bankr. Reg. 503, 514.

— (who is not). 17 Bankr. Reg. 305; 8 Ben. (U. S.) 563.

— (in bankrupt law). 2 Low. (U. S.) 374.

TRADESMEN, ARTIFICERS, OR OTHER PERSONS, (does not include "attorneys" or "farmers"). Wilberf. Stat. L. 182.

TRADING, (defined). 8 Cranch (U. S.) 155, 162.

TRADING IN A PUBLIC COMPANY, (in apportionment act). 12 Ch. D. 655.

TRADING PERSON, (who is). 4 Barn. & Ald. 510, 515.

TRADING VOYAGE, (does not include a "freighting voyage"). 2 Gall. (U. S.) 477.

TRADING WITH ENEMY.—This is unlawful as well on the part of the belligerent country's subjects, as also on the part of the subjects of allied States, (*The Hoop*, 1 Rob. Adm. 196; *Wheat. Int. L.* 392-403), the rights of inter-commerce being wholly suspended by the war.

TRADITIO.—The simple act of delivery; a mode of transferring the title to corporeal property.

Traditio loqui facit chartam (5 Co. 1.): Delivery makes the deed speak.

Traditio nihil amplius transferre debet vel potest, ad eum qui accipit,

quam est apud eum qui tradit (Dig. 41, l. 20): Delivery ought to, and can, transfer nothing more to him who receives than is with him who delivers.

TRADITION.—The act of handing over; delivery.

TRAFFIC.—Commerce; trade; sale or exchange of merchandise, bills, money, and the like.—*Bouvier*.

TRAINBANDS.—The militia; the part of a company trained to martial exercises.

TRAITOR.—One who being trusted betrays; one guilty of treason. *See* TREASON.

TRAITOROUSLY.—In a manner suiting traitors; perfidiously; treacherously.

TRAITOROUSLY, (necessary in an indictment for treason). Stark. Cr. Pl. 80, 81.

TRANSACT ALL BUSINESS, (power of attorney to). 1 Taunt. 349.

TRANSACTIO.—One of the innominate contracts of the Roman law, equivalent to the *transaction* of French law.

TRANSACTION.—In the French law, the *transactio* of Roman and the *compromise* of English law, being an agreement to give up the residue (if any) of an unascertained debt, in consideration of the payment of an agreed sum.

TRANSACTION, (whether a distress is). 7 Man. & G. 538.

— (in a statute). 71 Mo. 560; 18 Abb. (N. Y.) Pr. 186; 2 Robt. (N. Y.) 429.

TRANSACTION, BANKING, (what is not). 2 Hall (N. Y.) 515.

TRANSACTIONS, (in a statute). 2 Campb. 129.

TRANSCRIPT.—

§ 1. An official copy of certain proceedings in a court. Thus, any person interested in a judgment or other record of a court can obtain a transcript of it.

§ 2. In some jurisdictions, when an appeal is brought, the appellant has to see that a transcript of the proceedings and evidence in the court below is prepared and transmitted to the appellate court by the proper officer. *See* APPEAL, p. 65, note.

TRANSCRIPT, (what is not). Gilp. (U. S.) 44.

TRANSCRIPTIO PEDIS FINIS LEVATI MITTENDO IN CANCEL-LARIUM.—A writ which certified the foot of a fine levied before justices in eyre, &c., into the Chancery.—*Reg. Orig.* 669.

TRANSCRIPTIO RECOGNITION-IS FACTÆ CORAM JUSTICIARIIS ITINERANTIBUS, &c.—An old writ to certify a recognizance taken by justices in eyre.—*Reg. Orig.* 152.

TRANSFER.—

§ 1. **Property.**—In the law of property, a transfer is where a right passes from one person to another, either (1) by virtue of an act done by the transferor with that intention, as in the case of a conveyance or assignment by way of sale or gift, &c.; or (2) by operation of law, as in the case of forfeiture, bankruptcy, descent, or intestacy. (*See* Mark. El. L. § 460 *et seq.*) A transfer may be absolute or conditional, by way of security, &c. *See* ASSIGNMENT; BILL OF SALE; CONVEYANCE.

§ 2. **Transfer of stock, &c.**—In practice, "transfer" is used principally in the sense of voluntary transfer, and is applied especially to the operation of changing the ownership of stock, shares, &c., whether by registering an assignment or other instrument, or by making a simple entry in the register kept for that purpose. The person making the transfer is called the "transferor," and the person to whom it is made the "transferee." *See* SHARE; STOCK.

§ 3. **Transfer into court.**—In English Chancery and lunacy practice, stocks and other securities standing in the names of trustees, lunatics, and other persons, are sometimes ordered to be transferred into the name of the paymaster-general pending the proceedings, in order that they may be kept in safety until the time comes for them to be transferred out of court to the parties entitled. *See* CERTIFICATE, p. 187, n. (17); PAYMENT INTO COURT.

§ 4. **Transfer of land.**—Land registered under the English Land Transfer Act, 1875, is transferred or conveyed by the execution of an instrument of transfer in the statutory form, and by the entry of the transfer on the register. (§§ 29, 34; General Rules 23; Forms 23, 24.) The transfer of registered charges is similar. § 40; General Rules 21; Form 21. *See* CHARGE, § 6; LAND REGISTRIES.

§ 5. **Mortgage.**—A transfer of a mortgage takes place in England when the mortgaged property and the right to receive the mortgage debt are conveyed by the mortgagee, either alone or with the concurrence of the mortgagor, to a third person. Formerly it was an advantage to obtain the concurrence of the mortgagor in order that he might covenant with the transferee for payment of the debt, for otherwise the transferee was obliged to sue for the debt as attorney of the mortgagee (2 Dav. Prec. Conv. 815); but now the assignee of a debt can sue in his own name. (Jud. Act, 1873, s. 25, § 6. The Conveyancing Act, 1881, provides for the use

of statutory forms of transfer in the case of mortgages made in pursuance of the act, s. 27. See CHOSE, § 4.) As to the transfer of judgments, see JUDGMENT, § 20.

§ 6. **Transfer of cause.**—In procedure, "transfer" is applied to an action or other proceeding, when it is taken from the jurisdiction of one court or judge and placed under that of another. Any action in the High Court may be transferred from one division to another, or (in the case of an action in the Chancery Division) from one judge to another, by order of the Lord Chancellor; in the case of a transfer from one division to another, the consent of the president of each division is required. A division may also transfer an action to any other division with the consent of the president of the latter division. (Jud. Act, 1873, § 36; Rules of Court, li, 1, 2.) In the Chancery Division, a transfer of a cause from one judge to another may be either for all purposes, or for the purpose of trial or hearing only. Rules of Court, li, 1a. See **REMOVAL OF CAUSES.**

TRANSFER, (defined). 36 Conn. 429.

— (what constitutes). 46 Conn. 243, 244.

— (as applied to negotiable paper). 37 Miss. 441.

— (in act respecting disabilities of non-jurors). 1 Dall. (U. S.) 170.

— (of stock). 2 Conn. 579; 3 *Id.* 544; 5 *Id.* 246; 6 *Id.* 552; 10 Mass. 476, 481; 6 Pick. (Mass.) 324; 9 *Id.* 202; 5 Halst. (N. J.) 245; 2 Cow. (N. Y.) 770; 3 Paige (N. Y.) 350; 1 Sweeney (N. Y.) 643; 11 Wend. (N. Y.) 628; 20 *Id.* 91; 22 *Id.* 348; 2 Bing. 393; 1 Str. 458, 460, 535; Ang. & A. Corp. § 381.

TRANSFER OF CAUSES.—See **REMOVAL OF CAUSES.**

TRANSFERABLE, (in a marriage settlement). 9 Ves. 300.

TRANSFERRED, (in a policy of insurance). 5 Pick. (Mass.) 76.

TRANSFERRED, TO BE, (in a will). 1 Barn. & C. 336; 2 Dowl. & Ry. 480.

Transferuntur dominia sine titulo et traditione, per usucaptionem, scilicet per longam continuam et pacificam possessionem (Co. Litt. 113): Rights of dominion are transferred without title or delivery, by usucaption, to wit, long and quiet possession.

TRANSGRESSIO, (defined). Hob. 303.

Transgressio est cum modus non servatur nec mensura, debit enim quilibet in suo facto modum habere et mensuram (Co. Litt. 37): Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.

TRANSGRESSIONE.—See **DE TRANSGRESSIONE.**

TRANSHIPMENT.—If a ship is in distress in a foreign port, and the master

is unable to carry the cargo further, he is generally entitled to tranship it, *i. e.* put it on board another vessel and forward it to its destination, and thus earn the freight. But he is not justified in doing so if it would increase the freight payable by the shipper of the cargo, or cause a loss to the owners of the ship. Maud. & P. Mer. Sh. 321; Kay Shipm. 287.

TRANSHIPMENT, (defined). 9 Wend. (N. Y.) 592.

TRANSIENT, (in tax act). 57 Ala. 61.

TRANSIENT PERSONS, (who are). 51 Vt. 423, 427.

TRANSIRE.—In the English law of merchant shipping, when a coasting vessel is about to sail from her port of lading, an account giving particulars of the ship and her cargo must be delivered in duplicate to the customs collector of the port. He returns the original account, dated and signed by him, and this constitutes the "clearance" of the ship, and the "transire" or pass for the cargo; *i. e.* it is an authority to the custom house officers to let the vessel sail. The transire must be delivered up to the collector at the port of discharge before any of the cargo is unladen. A general transire may be granted to a coasting ship. Customs Consolidation Act, 1876, § 145 *et seq.*

TRANSIT—TRANSITUS.—See **STOPPAGE IN TRANSITU.**

Transit in rem judicatam: It passes into or becomes a *res judicata*. A short mode of saying that when a person has obtained a judgment in respect of a given right of action, he cannot bring another action for the same right, but must take proceedings to enforce his judgment. *King v. Hoare*, 13 Mees. & W. 494; *Chit. Cont.* 721. See **MERGER**, § 2; **RES JUDICATA**.

Transit terra cum onere (Co. Litt. 231a): Land passes subject to any burden affecting it.

TRANSITORY ACTION.—See **ACTION**, § 16.

TRANSITORY ACTION, (what is) 5 T. B. Mon. (Ky.) 3; 6 *Id.* 322; 15 Me. 89; 16 Md. 331; 6 Mass. 331; 7 *Id.* 229; 27 Mich. 153; 1 Halst. (N. J.) 298, 322; 2 *Id.* 350; 64 Barb. (N. Y.) 212; 14 Johns. (N. Y.) 134; 9 Wend. (N. Y.) 472; 17 *Id.* 323; 3 Serg. & R. (Pa.) 500; 41 Vt. 561; *Ld. Raym.* 120.

— (what is not). 33 Ill. 289; 2 Litt. (Ky.) 262; 2 Watts (Pa.) 126.

— (distinguished from "local action") 2 Bibb (Ky.) 458.

— (in a statute). 13 Mass. 354.

TRANSLATION.—The removing from one place to another; the removal of a bishop to another diocese.

TRANSLATIONS.—Copyright may exist in translations, these latter being regarded as original works. See **COPYRIGHT**, § 6.

TRANSLATITUM EDICTUM.—The edict (or portion thereof) which, as being of a permanent character, was repeated (*i. e.* transferred) from edict to edict by each succeeding prætor for his own particular year of office.

TRANSMIT, (in a will). 4 T. R. 737, 749.

TRANSPORT YOU, YOU HAVE COMMITTED AN ACT FOR WHICH I CAN, (actionable). 4 Moo. & S. 337.

TRANSPORTATION.—Under Stat. 5 Geo. IV. c. 84, which revised and consolidated the previous acts on the subject, the crown was enabled to appoint places beyond the seas to which offenders might be conveyed and kept to hard labor. During the present English reign the punishment of transportation was abolished, and that of penal servitude (*q. v.*) substituted. 4 Steph. Com. 449.

TRANSPORTATION, (defined). 2 Barn. & Ald. 258.

— (what is not). 2 Wheat. (U. S.) 120.

TRANSPORTATION OF PROPERTY, (what is). 6 Cal. 462, 470.

TRANSUMPTS.—In the Scotch law, an action of transumpt is an action competent to any one having a partial interest in a writing, or immediate use for it, to support his title or defenses in other actions. It is directed against the custodian of the writing, calling upon him to exhibit it, in order that a transumpt, *i. e.* a copy, may be judicially made and delivered to the pursuer.—*Bell Dict.*

TRAVELED PART OF THE ROAD, (in a statute, defined). 28 Mich. 32, 42; 4 Pick. (Mass.) 125.

TRAVELED PLACE, (in a statute). 7 Gray (Mass.) 98.

TRAVELER, (defined). 35 Conn. 185; 3 Barn. & Ald. 283, 285; 11 Pittsb. L. J. 407, and cases cited.

— (who is not). 43 Conn. 154; 1 Hilt. (N. Y.) 193.

— (in a statute). 62 Me. 468; 63 *Id.* 477; 65 *Id.* 34; 20 Am. Rep. 673; 8 Allen (Mass.) 237; 107 Mass. 347; 110 *Id.* 21, 23; Penn. (N. J.) 433; L. R. 1 C. P. 324.

TRAVELING, (defined). 47 Ala. 42; 53 *Id.* 519.

— (what is not). Com. 345.

— (in a statute). 49 Ala. 350, 355; 57 N. H. 17.

TRAVELING POST, (defined). 8 East 584, 585 n.

— (in a statute). 3 T. R. 69.

TRAVERSE.—OLD FRENCH: *traverser*, to deny; (Britt. 147 n.); from Latin, *transversus*.

§ 1. **Pleadings, affidavits, &c.**—In the ordinary practice, to traverse is to deny an allegation of fact. The term is

used both in pleadings and in affidavits; thus, if a plaintiff replies by simply joining issue on the statement of defense he traverses, *i. e.* denies, all the material allegations in the defense. (Hull v. Eve, 4 Ch. D. 341.) As to special traverses, traverses de injuriâ, &c., under the old common law practice, see Steph. Pl. (5), 190, 193. See **CONFESSION AND AVOIDANCE**.

§ 2. So, in an answer to interrogatories, a denial of the allegation impliedly contained in an interrogatory is a traverse, and may be either simple or subject to an explanation or admission previously given. (See **ANSWER**, § 1.) In an affidavit of documents, again, the paragraph stating that the deponent has no documents in his possession except those specified in the affidavit is sometimes called the "traverse," because the affidavit is in the same form as if it were made in answer to an interrogatory. Noel v. Noel, De G., J. & S. 461; Rochdale Canal Co. v. King, 15 Beav. 11.

§ 3. **Office, or inquisition.**—Traverse of office or inquisition is a mode by which a subject or citizen can, in certain cases, dispute an office or inquisition finding the crown or government entitled to property claimed by him. It was formerly a convenient remedy, on account of the difficulty of obtaining redress against the crown by petition of right, but since the amendment and extension of the latter mode of proceeding, traverses of office have fallen into disuse. One of the most usual instances of their use was in resisting extents (see **EXTENT**), in which case the defendant or traverser (*i. e.* the person claiming the property) entered an appearance and claim, followed by a plea or traverse disputing the debt alleged by the crown, to which the crown replied or demurred, and so on, until issue joined, when the cause was tried by a jury at Westminster. Judgment for the crown on a traverse is, "that the subject take nothing by his traverse;" if for the subject, it is judgment of *amoveas manus*—"that the queen's hands be amoved," &c. Chit. Prerog. 356 *et seq.*; Tidd Pr. 1076.

§ 4. **Lunacy.**—This procedure by traverse was extended to inquisitions in lunacy by Stat. 2 and 3 Edw. VI. c. 8. Under the present English practice, where a person has been found lunatic by inquisition, (not by trial under Lunacy Reg. Act, 1862, § 4 (see **INQUIRY**, § 5), for

in that case the inquisition can only be questioned by new trial or new inquiry,) and wishes to vacate it on the ground that he was of sound mind and capable of managing himself and his property when it was returned, he presents a petition for leave to traverse the inquisition, which is done by filing in the Petty Bag Office a traverse or plea alleging the insufficiency of the inquisition, to which the prosecutor of the commission replies in the name of the attorney-general representing the crown. The record is then made up and carried into the Queen's Bench Division for trial, and tried before a jury in the same manner as an ordinary issue. The result is either to affirm or vacate the inquisition. *Elm. Pr. Lun. ch. ix; Staunf. Prer. c. 20; Pope Lun. 71.*

§ 5. **Indictment.**—Formerly, where a person indicted for a misdemeanor, but not actually in custody, traversed the indictment by pleading not guilty, the trial was postponed until the next assizes or sessions, and hence "traverse" came to mean "postpone." The Stat. 14 and 15 Vict. c. 100, § 27, provides that no person shall be entitled to traverse, *i. e.* postpone, the trial of any indictment. *Arch. Cr. Pl. 97.*

TRAVERSE, (defined). 2 Bouv. Inst. 294.

TRAVERSE OF AN OFFICE.—Proof that an inquisition made of lands or goods by the escheator is defective and untrue made.

TRAVERSER.—In Ireland, a prisoner.

TRAVERSING ANSWER.—**TRAVERSING NOTE.**—In suits under the old English practice in Chancery, where the defendant refused or neglected to file an answer to the bill, the plaintiff might file either a traversing answer or a traversing note, which produced the same effect as if the defendant had filed an answer traversing the case made by the bill. (*Dan. Ch. Pr. 436.*) The modern practice dispenses with these fictions. *See Rules of Court, xxix. passim. See, also, PRO CONFESSO.*

TRAVERSUM.—A ferry.—*Mon. Angl.*

TREACHER, TRECHETOUR, or TREACHOUR.—A traitor.

TREADMILL.—An instrument of prison discipline in England. It is composed of a large revolving cylinder, having ledges or steps fixed round its circumference; the prisoners walk up these ledges, and their weight moves the cylinder round.

TREASON.—**NORMAN-FRENCH:** *tresoun, treason* (*Britt. 16a*); **LATIN:** *trudere*, to deliver up, to betray

§ 1. Treason, in its most general sense, is a crime committed by one person against another, to whom he is bound by some tie of allegiance or subjection. (4 Bl. Com. 75; *Mirr. J. ch. 1, § 7.*) It was formerly of two kinds in English law, high

treason and petit treason. The former now alone exists.

§ 2. **High treason.**—A person commits high treason who does an overt act showing an intention to kill or depose the queen, or to do her any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint; or to kill the wife of a king regnant; or to kill the heir-apparent to the throne; or who levies war against the queen; or who attempts by insurrection to intimidate the queen or the houses of parliament; or who actively assists the queen's enemies; or who violates the wife of a king regnant, or the eldest daughter of the sovereign, or the wife of the heir-apparent; or who kills the lord chancellor, or one of certain other high officials of the crown. Endeavoring to deprive or hinder any person from succeeding to the crown under the Act of Settlement, or denying the validity of the Act of Settlement, are also treasons. (4 Bl. Com. 75; *Mirr. J. ch. 1, § 7; 4 Steph. Com. 162; Steph. Cr. Dig. 32 et seq.; Stats. 25 Edw. III. c. 2; 1 Anne § 2, c. 17; 6 Id. c. 7; 36 Geo. III. c. 7.*) As to what are called treasonable felonies or treason felonies, such as acts showing an intention to depose the queen, or to intimidate her or the houses of parliament, *see* 11 and 12 Vict. c. 12. *See OVERT ACT.*

High treason is punishable by hanging, or, in the case of a man, by beheading, if so directed by the crown. *Steph. Cr. Dig. 36; see the Felony Act, 1870, § 31.*

§ 3. **In American law.**—The constitution of the United States (Art. III. § 3,) defines treason to consist only in levying war against the United States, or in adhering to their enemies, giving them aid or comfort. This offense is punished with death. Act of April 30th, 1790, 1 Story U. S. Laws 83.

§ 4. The offense of treason is an exception to the ordinary criminal law (1) in being subject to limitation in respect of time (Stat. 7 Will. III. c. 3, providing that no person shall be prosecuted for treason but within three years after the offense, except in the case of a designed assassination of the sovereign) (4 Steph. Com. 163); (2) in two witnesses being required for a conviction, unless the prisoner freely confesses his crime (*Id.* 426); and (3) in the prisoner being entitled to have a copy of the indictment and lists of the witnesses and jurors delivered to him ten days before the trial, unless he is charged with compassing or imagining bodily harm to the sovereign. *Id.* 420.

§ 5. **Petty treason.**—Petty treason was where a servant killed his master, a wife her husband, or an ecclesiastical person his superior, such a crime being considered a violation of

private allegiance. Petty treason has been abolished by being converted into the crime of murder, from which it only differed in its punishment. 4 Steph. Com. 76; Phillim. Ecc. L. 38; Stat. 24 and 25 Vict. c. 100, § 8. *See* ACCESSORY.

TREASON, (defined). 2 Abb. (U. S.) 364.

— (what is). 1 Abb. (U. S.) 58; 4 Cranch (U. S.) 486, 488; 11 Johns. (N. Y.) 553; 2 Wheel.-Cr. Cas. xxii.

— (what is not). 4 Cranch (U. S.) 126.

TREASON, FELONY, OR OTHER CRIME, (in constitution of United States). 24 How. (U. S.) 66, 99; 4 Sawy. (U. S.) 457.

TREASONABLE.—Having the nature or guilt of treason.

TREASONABLE PRACTICES, (are not treason). 1 Stuart (L. C.) 4.

TREASURE TROVE is where any money, coin, gold, silver, plate, or bullion, is found hidden in the earth or other private place. It belongs to the sovereign, unless the owner appears to claim it. (1 Bl. Com. 295; 2 Steph. Com. 546.) The government may grant the right to treasure trove found within a certain district to a private person, *e. g.* the lord of a manor. *See* DERELICT; FRANCHISE; MANOR; PREROGATIVE; WRECK.

TREASURER.—One who has the care of money or treasure.

TREASURER OF A COUNTY.—*See* COUNTY TREASURER.

TREASURER'S REMEMBRANCE.—He whose charge was to put the lord treasurer and the rest of the judges of the Exchequer in remembrance of such things as were called on and dealt in for the sovereign's behoof. There is still one in Scotland.

TREASURY.—That fiscal department of the government which controls the payments of the public money in accordance with the votes of the legislature.

TREASURY, (defined). 10 Mich. 54, 86.

— (synonymous with "treasurer"). 5 Conn. 288, 290.

— (equivalent to "State treasury" in constitution of Arkansas). 27 Ark. 625.

TREASURY BENCH.—The front seat on the right hand of the speaker of the House of Commons, upon which the members of the ministry who have seats in that house sit.

TREASURY CHEST FUND.—A fund, in England, originating in the unusual balances

of certain grants of public money and which is used for banking and loan purposes by the commissioners of the treasury. Its amount was limited by 24 and 25 Vict. c. 127, and has been further reduced to one million pounds, the residue being transferred to the consolidated fund, by 36 and 37 Vict. c. 56. *See* CONSOLIDATED FUND.

TREASURY NOTES, (are not money or cash). 3 Conn. 534.

TREATY.—

§ 1. **Agreement**.—In private law, treaty signifies the discussion of terms which immediately precedes the conclusion of a contract or other transaction. A warranty on the sale of goods, to be valid, must be made during the treaty preceding the sale. Chit. Cont. 419.

§ 2. **Foreign States**.—In public and international law, a treaty is an agreement between the governments of two States. (*See* STATE.) Such an agreement is, of course, not enforceable by legal proceedings. (*See* LAW, § 2; INTERNATIONAL LAW.) In England, the power of making treaties with foreign States is vested in the crown as part of its prerogative. (2 Steph. Com. 490.) In some cases, however, treaties made by the crown are not valid in the courts, unless concluded under the powers of an act of parliament. (For an instance, *see* EXTRADITION.) In the United States, treaties are made by the president, by and with the consent of the senate, provided two-thirds of the senators present concur. Const. Art. 2, § 2, n. 2.

TREATY, (in a contract). 2 Pet. (U. S.) 314; 6 Id. 735.

— (in United States constitution). 14 Pet. (U. S.) 57.

— (in treaties between the United States and the Cherokee Indians). 6 Pet. (U. S.) 519.

TREBLE COSTS—TREBLE DAMAGES.—*See* COSTS, § 7; DOUBLE DAMAGES.

TREBLE COSTS, (when allowed). 2 Barn. & Ald. 393; 4 Barn. & C. 154; 1 Chit. 137 n.

— (how computed). 5 Halst. (N. J.) 148; Penn. (N. J.) 110, 340; South. (N. J.) 513; 1 Chit. Gen. Pr. 27.

— (in a statute). 9 Wend. (N. Y.) 443.

TREBLE DAMAGES, (what are). 6 Dowl. & Ry. 1; 3 Moo. & S. 748.

— (when allowed). 25 Wend. (N. Y.) 422.

TREBLE DAMAGES AND COSTS OF SUIT, (in a statute). 1 Ld. Raym. 19.

TREBUCKET.—A tumbrel, castigatory, or cucking-stool. See **CASTIGATORY**.

TREE, (means a "standing tree"). 2 Dev. (N. C.) 162.

TREES, (property in). 1 Ld. Raym. 737; 1 Chit. Gen. Pr. 652.

— (grant of). 1 Atk. 175; 11 Co. 46, 48; 2 P. Wms. 242.

TREES, **ALL**, (an exception of, in a lease). 8 East 190.

TREES AND UNDERWOOD, (in a lease). 1 Chit. Gen. Pr. 183.

TREET.—Fine wheat. 51 Hen. III.

TREMAGIUM — TREMESIUM — TERMISSIUM.—The season or time of sowing summer corn, being about March, the third month, to which the word may allude.—*Cowell*.

TREMELLUM.—A granary.

Tres faciunt collegium (D. 50. 16. 85): Three make a corporation. At least three members are necessary to constitute a corporation.

TRESAYLE.—An abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

TRESPASS.—A generic name for various torts, most of them being distinguished by the Latin words formerly used in the appropriate writs.

§ 1. **Vi et armis—Quare cl. fr.**—Trespass *vi et armis* ("with force and arms") includes injuries to the person accompanied with actual force or violence, as in the case of battery and imprisonment (Broom Com. L. 125), and the act of entering on another man's land without lawful authority. This latter kind of trespass (in which the "force" is implied or fictitious) is also called trespass *quare clausum fregit*, "because he [the defendant] broke or entered into the close" or land of the plaintiff.* Not only entering a man's land, but also the acts of allowing cattle to stray into his land, or driving nails into his wall, or digging the minerals under his land, constitute trespass *qu. cl. fr.* (Underh. Torts 159.) To enable a person to bring an action of trespass *qu. cl. fr.*, he must have actual possession of the land. Therefore, an heir of land cannot maintain an

action for trespass committed before he took possession by entry. 3 Steph. Com. 399. See **POSSESSION**, §§ 11, 12.

§ 2. **Ab initio.**—Where a person has by law the right to enter on the lands of another for a certain purpose, and, after entry, he does something which he is not entitled to do, then he is considered a trespasser *ab initio*, or as if his entry had been unlawful. *Six Carpenters' Case*, 8 Co. 146b.

§ 3. **Continuing.**—A continuing trespass is one which is permanent in its nature; as, where a person builds on his own land so that part of the building overhangs his neighbor's land.

§ 4. **De bonis asportatis.**—Another variety of trespass *vi et armis* is trespass *de bonis asportatis*, for the wrongful taking of chattels. (Broom Com. L. 807.) Injuries committed to chattels while in the owner's possession (*e. g.* by poisoning his cattle), are also classed under the head of trespass *vi et armis*. *Id.* 809; Underh. Torts 209.

§ 5. **Trespass on the case** is a class of torts for which no remedy existed at common law until the Statute of Westminster 2 (13 Edw. I. c. 24) directed that whenever a writ existed, and "in a like case" (*in consimili casu*), falling under the same right, and requiring a like remedy, no form of writ was to be found, then a new writ should be framed. The principal distinction between trespass *vi et armis* and wrongs for which writs were framed under this statute (hence called writs of "trespass on the case," or "case" simply), is that in the former the damage is direct, and in the latter consequential. Thus, if a man throws a log on a highway, and in so doing injures a person, this is trespass; but if the log lies on the ground, and a person is injured by falling over it, this is case. (Broom Com. L. 125. Hence in actions on the case the words used in the writ were not *vi et armis*, but *contra pacem nostram*, "against our peace." See *Termes de la Ley*, s. v. **Trespass**.) The principal action for trespass on the case, having a specific

*3 Steph. Com. 364, 398. The fiction of "implied force" in a peaceable though wrongful entry on land is not justified by the old authorities; the forms for trespass *qu. cl. fr.* in the

Register have sometimes the words *vi et armis* sometimes not. It is therefore probable that they were originally only inserted where the trespass was forcible as well as wrongful.

name, is *trover* (*q. v.*) (*Assumpsit* is also a variety of trespass on the case. *Steph. Pl.* 18), but the class also includes a large number of torts having no specific name, especially those arising from negligence, fraud, &c. *Dic. Part.* 24.

§ 6. Trespass gives rise to a right of action for damages. *See TORT*, § 2.

TRESPASS, (defined). *Hempst. (U. S.)* 30.
 — (a *devastavit* is not). *12 Serg. & R. (Pa.)* 58.

TRESPASS DE BONIS ASPORTATIS.—*See TRESPASS*, § 4.

TRESPASS ON THE CASE.—*See TRESPASS*, § 5.

TRESPASS ON THE CASE, (defined). *22 Conn.* 20, 23.

TRESPASS QUARE CLAUSUM FREGIT.—*See TRESPASS*, § 1.

TRESPASS TO TRY TITLE.—The name of the action used in one or two of the States for the recovery of the possession of real property and damages for any trespass committed upon the same by the defendant.

TRESPASS VI ET ARMIS.—*See TRESPASS*, § 1.

TRESPASSER.—One who commits a trespass.

TRESPASSER AB INITIO.—*See TRESPASS*, § 2.

TRESTONARE.—To turn or divert another way.—*Cowell.*

TRET.—*See TARE AND TRET.*

TRETHINGS.—Taxes, imposts.

TREYTS.—Taken out or withdrawn, as withdrawing or discharging a juror.

TRIA CAPITA.—In the Roman law, were *civitas*, *libertas*, and *familia*, i. e. citizenship, freedom, and family rights. *See CAPUT*; *STATUS.*

TRIAL.—Old French: *trier*; from late Latin, *tritare*, to sift, separate, determine; from Latin, *trere*, *tritum*, to thrash corn. (*Diez. Wortb* II. 441; *Littre s v A* form *detrir* occurs in *Britt* 127 a.) In the old writers "trial" signified not only the trial of questions of fact, but also what we call the argument or hearing questions of law, e. g. on demurrer. *Co. Litt.* 124.

§ 1. Trial is that step in an action, prosecution or other judicial proceeding, by which the questions of fact in issue are

decided. (*See FACT*; *ISSUE*; *QUESTIONS OF LAW.*) In actions in the English High Court, there are five principal modes of trial, viz.: trial before a judge and jury before a judge alone, before a judge with assessors, before a referee alone, and before a referee with assessors. (*Rules of Court*, xxxvi. 2.) Assessors are unknown in American practice, but the other three modes of trial are common.

§ 2. Jury.—Trial before a judge and jury, (formerly called "*trial per pais*,") is a mode of trial peculiar to the courts having common law jurisdiction. While Courts of Chancery are empowered to summon juries to try questions of fact, the power is seldom exercised. Where the action is of such a nature that either party is entitled to have it tried by a jury, then either party may insist on its being so tried, unless it is a case coming within the power of compulsory reference, possessed by the court. (*See NOTICE OF TRIAL*; *REFERENCE*, § 4.) Therefore either party may require an action for assault to be tried by a jury, while no such right exists in the case of an action for specific performance, for dissolution of a partnership, or the like. *See Swindell v. Birmingham Syndicate*, 3 Ch. D. 127; *Rushton v. Tobin*, 10 *Id.* 558.

§ 3. A trial by jury consists of the operation of calling and swearing the jury (*see CHALLENGE*; *JURY*), of a speech by the counsel for the plaintiff (*see OPEN*, § 2), the examination, cross-examination and re-examination of his witnesses; a speech by the counsel for the defendant, followed by the examination, cross-examination and re-examination of his witnesses, and a summing up of their evidence by him; the reply or speech by the plaintiff's counsel; the summing up of the whole case by the judge for the jury; and, lastly, the jury's verdict. (*Sm. Ac.* 130 *et seq.*; 3 *Steph. Com.* 512; *Kino v. Rudkin*, 6 Ch. D. 160. *See* the various titles; *also*, *RIGHT TO BEGIN.*) It sometimes happens, however, that the trial comes to a premature end by the non-appearance of one of the parties, or by non-suit (*q. v.*), or the withdrawal of a juror (*q. v.*) If the plaintiff does not appear at the trial, the action is dismissed; if the defendant does not

appear, the plaintiff must prove his case, so far as the burden of proof lies upon him. A verdict or judgment so obtained may be set aside by the court upon terms.

§ 4. **Trial at bar.**—Sometimes a trial is ordered to take place before several judges and a jury; this was formerly called a "trial at bar" (*see* BAR, § 3), as opposed to the ordinary trial, which is sometimes called, by way of distinction, "trial at nisi prius." *See* NISI PRIUS.

§ 5. **New trial.**—Where the judge who tried the action has misdirected the jury in point of law, or admitted evidence which ought to have been refused, or rejected evidence which ought to have been admitted, or where the jury have found against the weight of the evidence, or given excessive or grossly inadequate damages, and, generally, wherever it is clear that a fair trial has not been had, the party aggrieved may obtain an order for a new trial on motion made for that purpose. (*See* RULE, § 3.) The whole proceedings on the trial are then gone through afresh, and, if the case is again not properly tried, a third trial may be ordered, and so on. *Sm. Ac. 149 et seq.*

§ 6. **Trial before judge, referee, &c.**—The other modes of trial are similar to trial before a judge and jury, except that the calling and swearing of the jury, and the summing up by the judge, are necessarily absent. Where the trial is before a judge alone, the evidence is sometimes taken by affidavit.

§ 7. **Trial with assessors.**—Admiralty actions involving nautical questions, *e. g.* actions of collision, are generally tried in England before a judge with Trinity Masters sitting as assessors (*q. v.*) *Rosc. Adm. 179.*

The following kinds of trial are either obsolete or very rare.

§ 8. **By the record.**—By certificate.—Trial by the record is where issue is joined as to the existence of a particular record (*q. v.*); such an issue is tried by the court itself on production of the record. (*Sm. Ac. (11 edit.) 126; Arch. Pr. 750.*) Trial by certificate is where a fact can only be proved by the certificate of a public official; thus, the custom of the city of London in respect of foreign attachment is proved by the oral certificate of the recorder. *Mayor of London v. Cox, L. R. 2 H. L. 239. See Co. Lit. 74a; 9 Co. 30b et seq.; 3 Bl. 330,* for other obsolete varieties of trial.

§ 9. **County court.**—In county court actions, the plaintiff appears in court on

the return day of the summons, and the defendant must appear to answer the plaint. On answer being made in court, the judge proceeds to try the cause in a summary way. (*Poll. C. C. Pr. 159.*) In small cases the plaintiff and defendant are sworn and make their statements to the judge, being asked questions by him when necessary; but in cases where counsel or solicitors are employed, and a jury summoned, the course of proceeding resembles that on a trial in the superior courts.

§ 10. **Criminal procedure.**—In criminal cases, the trial of a person accused of a crime usually takes place before a judge and petty jury, or at bar, *i. e.* by a jury before three or more judges; this last mode of trial is only used in important cases. (*See* QUEEN'S BENCH.) The steps on a criminal trial are substantially the same as those above described (*supra*, § 4), substituting "prosecutor" for "plaintiff," and "prisoner" for "defendant." (*4 Steph. Com. 416. See, also, ACQUITTAL; CONVICTION.*) The obsolete modes of trial by ordeal, by the corsned, and by battle, will be found described in Blackstone (*4 Bl. Com. 342*), and also under the appropriate titles in this work.

§ 11. **Trial by peers.**—In cases of treason and felony, in England, a nobleman is entitled to be tried by his peers, *i. e.* by members of the House of Lords. *1 Bl. Com. 401. See CERTIORARI, § 4; HOUSE OF LORDS; LORD HIGH STEWARD.*

TRIAL, (defined). *32 Cal. 265; 39 Ind. 1; 112 Mass. 343.*

—(distinguished from "hearing"). *74 Ind. 362; 129 Mass. 508, 512; 28 Mich. 527.*

—(as referring to an issue of fact and not a question of law). *16 Sim. 250.*

—(in a statute). *4 Mas. (U. S.) 232, 237; 1 Abb. (N. Y.) Pr. 125; 4 Id. 262; 4 Dr. (N. Y.) 609; 28 How. (N. Y.) Pr. 184; 63 Id. 343; 3 E. D. Smith (N. Y.) 648; 3 Pittsb. (Pa.) 109.*

TRIAL BY JURY.—*See* TRIAL, §§ 2, 3

TRIAL BY JURY, (defined). *11 Nev. 39; 11 R. I. 182, 184.*

TRIAL, FINAL, (what is not). *19 Wall. (U. S.) 214.*

TRIBUNAL.—The seat of a judge; a court of justice.

TRIBUNAUX DE COMMERCE.—In the French law, courts consisting of a president, judges, and substitutes elected in an assembly of the principal traders. No person under

thirty years is eligible as a member of the tribunal, and the president must be forty years of age at the least. The tribunal takes cognizance of all cases arising between merchants, and also of all disagreements arising among partners. The course of procedure is as in civil cases, and with an appeal to the regular courts.—*Brown*.

TRIBUTE.—Payment made in acknowledgment; subjection.

TRICESIMA.—An ancient custom in a borough in the county of Hereford, so called because thirty burgesses paid 1*d.* rent for their houses to the bishop, who was lord of the manor.—*Lib. Nik. Heref.*

TRIDINGMOTE.—The court held for a triding or trithing.—*Cowell*.

TRIENNIAL ACT.—An act passed by the Long Parliament, 1640–1, and repealed by the Convention Parliament, 1660, and more particularly the Act 6 Will. & M. c. 2, whereby every parliament, unless sooner dissolved, came to an end in three years. It was repealed on the accession of Geo. I. by the Septennial Act.

TRIENS.—A third part; also, dower.

TRIERS, or TRIORS.—Persons sometimes appointed by the court (when necessary) to decide challenges to jurors, where no jurors have been already sworn on the jury. As soon as two jurors are sworn, they, or the court, generally decide all subsequent challenges. Challenges to the array may be tried by the court. Arch. Pr. 392. See CHALLENGE; ELISORS.

TRINEPOS.—In the civil law, the male descendant in the sixth degree in direct line.

TRINITY HOUSE is the short name usually given to "The master, wardens and assistants of the guild, fraternity or brotherhood of the most glorious and undivided Trinity, and of St. Clement in the parish of Deptford Strand in the county of Kent;" also called the "Corporation of the Trinity House of Deptford Strand." It was incorporated in the reign of Henry VIII., and charged by many successive charters and acts of parliament with numerous duties relating to the marine, especially in relation to pilotage (*q. v.*), and the erection and maintenance of lighthouses, beacons and sea-marks. Eng. Merch. Shipp. Act, 1854; 3 Steph. Com. 156 *et seq.*

TRINITY MASTERS are elder brethren of the Trinity House. If a question arising in an admiralty action depends upon technical skill and experience in navigation, the judge or court is usually assisted at the hearing by two Trinity Masters, who sit as assessors and advise the court on questions of a nautical character. Wms. & B. Adm. 271. See ASSESSOR.

TRINITY SITTINGS.—Sittings of the English Court of Appeal and of the High Court of Justice in London and Middlesex commencing on the Tuesday after Whitsun week and terminating on the 8th of August (Jud. Act, 1875, Ord. LXI, r. 1).

TRINITY TERM.—One of the four legal terms in England, beginning on the 22d May, and ending on the 12th of June.

TRINOBANTES, TRINONANTES, or TRINOVANTES.—Inhabitants of Britain, situated next to the Cantii northward, who occupied, according to Camden and Baxter, that country which now comprises the counties of Essex and Middlesex, and some part of Surrey. But if Ptolemy be not mistaken, their territories were not so extensive in his time, as London did not then belong to them. The name seems to be derived from the three following British words: *Tri*, now, *hant*, i. e. inhabitants of the new city (London).—*Encycl. Lond.*

TRINODA NECESITAS.—Under this denomination are comprised three distinct imposts, to which all landed possessions, not excepting those of the church, were subject, viz.: (1) *Bryge-bót*, for keeping the bridges and high roads in repair.—*Pontis constructio*. (2) *Burg-bót*, for keeping the burghs or fortresses in an efficient state of defense.—*Arcis constructio*. (3) *Fyrd*, or contribution for maintaining the military and naval force of the kingdom.—*Anc Inst. Eng.*

TRIOES.—See TRIERS.

TRIPARTITE.—Divided into three parts, having three correspondent copies; a deed to which there are three distinct parties.

TRIPLICATIO.—A rebutter.

TRISTIS.—A forest immunity. Manw. 1, 86.

TRITAVIA.—In the civil law, a great-grandmother's great-grandmother; the female ascendant in the sixth degree.

TRITAVUS.—In the civil law, a great-grandfather's great-grandfather; the male ascendant in the sixth degree.

TRITHING.—The third part of a hire or province; a riding.—*Cowell*.

TRITHING-REEVE.—A governor of a trithing.

TRIUMVIR.—A trithing man or constable of three hundred.—*Cowell*.

TRIVERBIAL DAYS.—Judicial days, when the courts are open for business; so called from the three words *do*, *disco*, and *addico*.

TRONAGE.—A customary duty, or toll for weighing wool.—*Cowell*.

TRONATOR.—A weigher of wool.—*Cowell.*

TROPHY MONEY.—Money formerly collected and raised in London, and the several counties of England, towards providing harness, and maintenance for the militia, &c.

TROUBLE AND EXPENSE, FULL INDEMNITY FOR THE, (in a statute). 122 Mass. 338.

TROVER.—In common law practice, the action of trover (or trover and conversion) is a species of action on the case (*see* TRESPASS, § 5), and originally lay for the recovery of damages against a person who had found another's goods and wrongfully converted them to his own use; subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. (3 Steph. Com. 425.) The name "trover" is sometimes applied to an action brought for the same purpose under the modern English and code practice, though, at the present day, it is probably more usual in such a case to bring an action claiming delivery of the goods and damages for the wrongful detention. In an action of trover the plaintiff can only recover the value of the goods, not the goods themselves. *See* DETINUE; TORT; WRIT OF DELIVERY.

TROVER, (when will lie). 5 Mass. 104.

—— (who may maintain). 7 Halst. (N. J.) 294.

—— (declaration in). 3 Gr. (N. J.) 337.

—— (for a bill of exchange). 1 Esp. 50.

TROY WEIGHT.—A weight of twelve ounces to the pound, having its name from Troyes, a city in Aube, France.

TRUCE.—In international law, a suspension or temporary cessation of hostilities between belligerent powers; an armistice. Wheat. Int. L. 442.

TRUCHMAN.—An interpreter.

TRUCK ACT is the statute 1 and 2 Will. IV. c. 37, passed to abolish what is commonly called the "truck system," under which employers were in the practice of paying the wages of their work people in goods, or of requiring them to purchase goods at certain shops; this led to laborers being compelled to take goods of inferior quality at a high price. The act applies to all artificers, workmen and laborers, except those

engaged in certain trades, especially iron and metal works, quarries, cloth, silk and glass manufactories. It does not apply to domestic or agricultural servants. Sm. Mast. & S. 166; Stat. 23 and 24 Vict. c. 151, § 28.

TRUCK WAGON, ONE CART OR, (in a statute). 71 Me. 165.

TRUE BILL.—*See* INDIOTMENT.

TRUE BILL, (indorsed on an indictment). 6 Car. & P. 354.

—— (effect of omission of). 6 Wheel. Am. C. L. 17.

TRUE INVENTOR, (defined). Fess. Pat. 321.

TRUE OWNER, (of goods, who is). 1 Atk. 185.

TRUE, PUBLIC AND NOTORIOUS.

—These three qualities used to be formally predicted in the libel in the Ecclesiastical Courts, of the charges which it contained, at the end of each article severally.

TRUE VALUE, (what constitutes). 2 Mas. (U. S.) 393.

—— (in duty act). 11 Wheat. (U. S.) 419.

TRUE VOTE, (defined). 16 Fla. 17.

TRUNK OF LINEN, (trover will lie for). 7 Mod. 142.

TRUST.—

§ 1. A trust, in its simplest form, is a relation between two persons, by virtue of which one of them (the trustee) holds property for the benefit of the other (the *cestui que trust*), while as regards the rest of the world he (the trustee) is, for most purposes, absolute owner of it. (As to trusts generally, *see* Lew. Trusts; Wats. Comp. Eq. 839 *et seq.* As to the origin of trusts, *see* Butler's note to Co. Litt. 290b, and title *Use.*) The right of the *cestui que trust* to that benefit is enforceable as a personal right only against the trustee and those who have acquired interests in the trust property with notice of the trust. As between the trustee and the *cestui que trust*, and those claiming under them, the *cestui que trust* is in effect beneficial owner of the trust property (*Burgess v. Wheate*, 1 Ed. 224 (at p. 250)), either absolutely or with restrictions according to the nature of the trust. As trusts were formerly enforced only in equity, he is sometimes called "equitable owner." *See* EQUITY, § 7; ESTATE, § 13; OWNERSHIP, § 10.

§ 2. **Assignments of trusts.**—This equitable ownership or interest is assignable, except in the case of a restraint on alienation or anticipation (*see* those titles), or of a discretionary trust (*infra*, § 14).

By the Statute of Frauds (*q. v.*) all grants and assignments of trusts must be in writing, signed by the grantor or assignor. No particular form of words is required for an assignment of a trust, but it is the custom to employ the same kind of instrument and the same form of words as if the interest were legal instead of equitable. Wms. Real Prop. 169; Lew. Trusts 494.

§ 3. **Devolution of trusts.**—The devolution of a trust, *i. e.* of an equitable estate or interest in property, follows the rules of law applicable to a corresponding legal estate or interest; therefore, if A. holds land in trust for B. absolutely, and B. dies intestate, his heir (whether heir-at-law, or heir in gavelkind or borough English (Wms. Real Prop. 168), according to the tenure of the land,) becomes *cestui que trust*, or beneficial owner, of the land; in the case of personal property, B.'s interest would pass to his executors, and be distributed, after payment of his debts, among his next of kin. (See ASSETS, § 3) Trust property is liable to be taken in execution, (see ELEGIT, § 2; EXECUTION, § 5; STATUTE OF FRAUDS;) and if the *cestui que trust* becomes bankrupt it vests in the trustee in his bankruptcy. The ownership of the trustee, on the other hand, is not subject to his debts, does not pass to his trustee if he becomes bankrupt, and is not liable to succession duty on his death.

Trusts arise either by the act of the party or by operation of law.

§ 4. **Trusts by act of the party.**—Trusts by act of the party are either express or implied.

§ 5. **Express.**—An express trust is one created by clear words; as, where A. gives property to B. in trust for C., or otherwise expresses a clear intention that C. shall have the benefit of it, provided that it is not of such a nature as to take effect as a use under the Statute of Uses. (See USE.) A. is called the author of the trust, or the settlor, testator, &c., according to the instrument by which the trust is created. As to where writing is required for the creation of trusts, see DECLARATION, § 3; STATUTE OF FRAUDS. See, also, SECRET TRUSTS.

§ 6. With reference to the completeness

with which they are expressed by the author of the trust, trusts are of two classes, viz.: (1) Those in which the objects of the trust are completely indicated; and (2) those in which they are not.

§ 7. **Executed trust—Executory trust.**—Trusts of the former class are again divisible into trusts executed and trusts executory. An executed trust is one in which the limitations of the equitable interest are complete and final; as if A. conveys property in trust for C. for life, and after his death in trust for D. absolutely. In an executory trust the limitations of the equitable interest are intended to serve merely as minutes or instructions for perfecting the settlement at some future period, (Lew. Trusts 89; 1 White & T. Lead. Cas. 18; notes to Glenorchy v. Bosville, Cas. t. Talbot 3;) thus, a trust in marriage articles to settle land on the intended husband for life, with remainder to the heirs of the body of the husband and wife, is executory, because it contemplates a future settlement in accordance with the intention expressed by the articles, which is that such a limitation may be made as will give the husband a life estate only, with remainder to the eldest and other sons successively in tail; the distinction is important, for if the limitations in the articles were treated as final, (in other words, as an executed trust,) they would, under the rule in Shelley's Case (*q. v.*), give the husband an estate tail, which would enable him to defeat the interests of the issue. *Id.*

§ 8. **Power in the nature of trust.**—A trust in which the objects are not completely indicated is sometimes called a "power in the nature of a trust," or a "mixture of a trust and power;" in other words, a trust of which the outline only is sketched by the settlor, while the details are to be filled up by the good sense of the trustees (Lew. Trusts 19); as if A. gives property to B. with power (or upon trust) to dispose of it among A.'s relations, then, in default of a disposal by B., the property will be divisible among A.'s next of kin. (Salisbury v. Denton, 3 K. & J. 529; 2 White & T. Lead. Cas. 876.) "A disposition of this kind contains a mix-

ture of trust and power. The trust must be exercised for relations and kindred of some description or other. The power of selection belongs to those to whom the testator has thought right to confide it. . . . If there is any person entitled to exercise the power, the trust will be for those of the relations and kindred whom such person shall select; if the power is extinct the trust is for those who answer the description of relations and kindred according to the construction this court may put upon these words." Per Sir W. Grant, *Cole v. Wade*, 16 Ves. 43.

With reference to their purposes, trusts are either public or private.

§ 9. **Public trusts.**—"By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for *charitable* purposes, and indeed *public* trusts and *charitable* trusts may be considered in general as synonymous expressions." Lew. Trusts 20.

§ 10. **Private trusts.**—"In private trusts the beneficial interest is vested absolutely in one or more individuals, who are, or within a certain time may be, definitely ascertained, and to whom therefore, collectively, unless under some legal disability, it is, or within the allowed limit will be, competent to control, modify or determine the trust." (Lew. Trusts 20.) Public trusts are necessarily administrative (*q. v.*); private trusts, on the other hand, may be simple [passive] or special [active].

§ 11. **Simple, or passive trusts.**—"The simple trust is where property is vested in one person upon trust for another, and the nature of the trust, not being prescribed by the settlor, is left to the construction of law. In this case the *cestui que trust* has *jus habendi*, or the right to be put in actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances as the *cestui que trust* directs;" he is, in short, absolute equitable owner of the property. See TRUSTEE, § 10.

§ 12. **Special, or active trusts.**—"The special trust is where the machinery

of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not, as before, a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts" (Lew. Trusts 18), or to pay the income to a given person during his life. (See SETTLEMENT.) With reference to the obligations of the trustee, special trusts are divisible into imperative and discretionary.

§ 13. **Imperative trusts.**—An imperative trust is where the trustee is bound to act in the manner directed; thus, if the property is given upon trust to sell, the trustee is bound to sell.

§ 14. **Discretionary trusts.**—A discretionary trust is where the performance or exercise of the trust, and not merely the mode of its exercise, is left to the discretion of the trustee; as if property is given to B. upon trust to apply it for the benefit of C., or his wife and children, during his life, in such manner and so long as B., in his discretion, shall think best; such trusts are not unfrequently inserted in wills and settlements, when it is desired to prevent an allowance given to a spendthrift and his family from being assigned by him, or taken by his creditors on his bankruptcy, because, as the trust cannot be enforced against the trustee, C. has no interest capable of being sold or otherwise dealt with for the benefit of his creditors. Elph. Conv. 297.

§ 15. **Ministerial, or administrative trusts.**—Discretionary trusts (*sensu lato*).—With reference to the mode in which they are to be exercised, special trusts are divisible into ministerial (or instrumental) and discretionary. Ministerial trusts are such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; such is a trust to convey an estate to a certain person. Discretionary trusts (in the general sense of the word) are such as cannot be duly administered without the application of a certain degree of prudence and judgment (Lew. Trusts 18); a trust may therefore be discretionary either with reference to whether it

shall be exercised at all, or with reference to the mode in which it shall be exercised; as where a fund is vested in trustees upon trust to distribute among such charitable objects as the trustees shall think fit. So, a trust for sale must be considered discretionary. *See* DISCRETION.

§ 16. "To this class belongs what is called a 'trust with a power annexed,' where the trust itself is complete, and the power being but an accessory may be exercised or not as the trustee may deem it expedient; as where lands are limited to trustees with a power of varying the securities." *Lew. Trusts* 19.

§ 17. **Implied trusts—Precatory.**—An implied trust is where the intention to create the trust is inferred. Thus, if A. gives property to B., "not doubting," "entreating," or "hoping" that B. will employ it for the benefit of C., a trust is implied in favor of C., the execution of which C. can enforce, although it is given in a precatory form. This is called a "precatory trust." *Lew. Trusts* 86 n.; *Harding v. Glyn*; 1 Atk. 469; 2 White & T. Lead. Cas. 860; *Willis v. Kymer*, 7 Ch. D. 181.

§ 18. **Honorary.**—An honorary trust is where A. gives property to B., "relying on his honor" (or using equivalent words) that he will employ it for the benefit of C. Such a trust is not legally enforceable. *L. R.* 18 Eq. 114.

§ 19. **Trusts by operation of law** are such as are not declared by the party at all, either directly or indirectly, but result from the effect of a rule of equity. They are of two kinds, resulting and constructive.

§ 20. **Resulting trusts.**—A resulting trust arises where a trust is created which does not dispose of the property. Thus, if an estate is devised to A. and his heirs upon trust to sell and pay the testator's debts, then the surplus of the beneficial interest constitutes a resulting trust in favor of the testator's heir. (*See* RESULT.) As a general rule, where in a conveyance or will the legal estate is given to a person, but no trust is expressed, and an intention can be collected that the grantee or devisee should not take the beneficial interest (as where a person purchases property in the name of another), the interest will result

to the grantor, purchaser, &c.; similarly, if part of the beneficial interest is disposed of, the residue will result. *Wats. Comp. Eq.* 868; 1 White & T. Lead. Cas. 184. *See* ADVANCEMENT, § 8; CONVERSION.

§ 21. **Failure of trust.**—Where a private trust wholly fails, and there are no heir, next of kin, or other persons representing the settlor, then, in the case of real estate, the trustee takes it for his own benefit (*Wms. Real Prop.* 167), while in the case of personal estate it goes to the crown as *bonum vacans*. (*Lew. Trusts* 234.) As to charitable trusts, *see* CY-PRES.

§ 22. **Constructive trusts.**—A constructive trust is one which the court creates by a construction put upon certain acts of the parties; thus, when a tenant for life of leaseholds renews the lease on his own account, the law gives the benefit of the renewed lease to those who were interested in the old lease. *Id.* 86 n.; 1 White & T. Lead. Cas. 40.

§ 23. As soon as a valid contract for the sale of land has been entered into, the vendor becomes in equity a trustee of the land for the purchaser, to whom the beneficial ownership passes. The vendor has a lien for his purchase money, and is entitled to retain possession until he is paid; but he is accountable to the purchaser for the rents and profits, and for any willful waste or neglect. *Lew. Trusts* 113; *Ly-saght v. Edwards*, 2 Ch. D. 506.

§ 24. **Investment trusts, &c.**—"Trust" is used in a peculiar sense to denote a mode of carrying on a business for purposes of profit. Thus a "share investment trust" is an agreement between a small number of persons (the trustees) and a comparatively large and fluctuating body of persons (generally called "subscribers," "certificate holders," or the like,) that the trustees shall acquire and hold certain shares in companies and receive the income for the benefit of the subscribers, with power to sell any shares and re-invest the proceeds in other shares. Such an arrangement does not constitute the subscribers an association within the meaning of the English Companies Act, 1862, and therefore does not require registration, unless the trustees exceed twenty in number. *Smith v. Anderson*, 15 Ch. D. 247,

overruling *Sykes v. Beadon*, 11 Ch. D. 170, where the question whether the "trust" in that case was a lottery was raised.

TRUST, (defined). 21 Conn. 613; 88 Ill. 490.

— (what is). 50 N. H. 491.

— (what is not). 8 Jur. 1086.

— (is not an estate in land). 3 Harr. (N. J.) 390.

— (how proved). 1 Johns. (N. Y.) Ch. 342; 5 *Id.* 1.

— (need not be created by writing). 3 Cow. (N. Y.) 580.

— (what words in a will necessary to create). 31 Md. 153; 8 Jur. 923; 5 Myl. & C. 73; 2 Younge & Coll. C. C. 363.

— (raised by implication). 3 Ves. 696.

TRUST, EXECUTORY, (distinguished from an "executed trust"). 1 Jac. & W. 549.

TRUST, IN, (in a will). 8 Pet. (U. S.) 326.

TRUST, RESULTING, (may be established by parol). 2 Johns. (N. Y.) Ch. 408.

TRUSTEE.—

§ 1. In the strict sense of the word a trustee is a person who holds property upon trust (*q. v.*)

As to private trustees, or trustees acting under wills, settlements, and similar instruments.

§ 2. **Private trustees.**—Any person or corporation may hold property as trustee, but as persons under disability (such as infants and married women) are unable to exercise many of the powers annexed to the office, they are rarely appointed trustees. (*See TRUSTEE ACTS.*) Corporations, moreover, cannot, as a rule, hold land without the license of the government, and therefore are unfit to be trustees of land; they also cannot be *cestuis que trust* of land without such license. *Lew. Trusts* 23, 36. *See MORTMAIN.*

§ 3. **Devolution of office.**—The office of a trustee is a personal one, and does not necessarily devolve or pass with the trust property. If one of several trustees dies, the office devolves on the survivors; the property also passes to the survivors, trustees being always made joint tenants. (*Wms. Real Prop.* 136. *See JOINT TENANCY*, § 9.) Formerly, when a sole trustee died, the property passed to his heir or devisee if it was realty, or to his personal representatives or legatee if it was personalty. This rule was recently altered, in England, as regards bare trustees, (*Stats.* 38 and 39 Vict. c. 87, s. 48, repealing Stat. 37 and 38 Vict. c. 78, s. 4, both repealed by the Con-

veyancing Act, 1881, s. 30. (*See DESCENT*, § 8.) There is no forfeiture or escheat by failure of the heirs or corruption of the blood of a trustee. Stat. 13 and 14 Vict. c. 60, s. 47; *Wms. Real Prop.* 168; and now when any sole trustee or mortgagee of real estate dies after December 31st, 1881, the same shall, notwithstanding any testamentary disposition, devolve to his personal representatives as if it were a chattel real. (*Conveyancing Act*, 1881, s. 30) When a new trustee is appointed in the place of the deceased, his real or personal representatives convey the property to the new trustee by the same modes of conveyance (deed of grant, assignment, &c.,) as those used in conveyances by absolute owners; until that is done, they hold the property upon trust so to convey it, but they are not clothed with the office of trustee under the instrument creating the trust unless it so provides, and therefore they cannot exercise any of the powers conferred by the trust.

§ 4. Trusteeship is also different from executorship. Therefore, if a testator appoints A. to be executor and trustee of his will, and A. renounces the executorship, he remains trustee unless he executes a disclaimer of the office. *See DISCLAIMER*; *RENOUNCE.*

§ 5. **Power of appointing new trustees.**—Most instruments creating trusts contain a power of appointing new trustees; the power is generally vested either in the beneficiaries (*cestuis que trust*) or some of them, or in the trustees themselves, including the last survivor and his executors or administrators. As regards any instrument executed in England after 28th August, 1860, under which there is no person having a power of appointing new trustees, and able and willing to act, a power of appointing new trustees to supply any vacancy by death, retirement, &c., was, by the Trustees and Mortgagees Clauses Act (Stat. 23 and 24 Vict. c. 145), vested in the surviving or continuing trustees or trustee, or the acting executors or administrators of the last surviving or continuing trustee, or the last retiring trustee. (*Wms. Real Prop.* 176.) These provisions have been extended by the Conveyancing Act, 1881, § 31 *et seq.*, which also provides for the vesting of the trust property in the

new trustees by a declaration contained in the deed of appointment.

§ 6. **Trustee acts.**—In the case of instruments executed before 25th August, 1860, and generally whenever it is impossible to appoint new trustees, or to obtain a conveyance of the trust property, recourse must be had to the court under the provisions of the Trustee Acts (*q. v.*, and *see* VESTING ORDER). Section 31 of the Conveyancing Act, 1881, (giving a power of appointing new trustees where the instrument creating the trusts contains no sufficient power,) applies to trusts created either before or after the 31st December, 1881. It therefore applies to trusts which were not within the provisions of the Trustees and Mortgagees Clauses Act, by reason of their having been created before the 28th August, 1860.

§ 7. **Statutory powers.**—In addition to the powers given to trustees by the instruments creating the trusts under the English law, powers have been conferred on them by statute, especially by the Trustees and Mortgagees Act, 1860, (supplemented by the Conveyancing Act, 1881, § 35,) giving trustees power in relation to the sale of real property, and the renewal of leases, &c. As to their statutory powers of investment, *see* INVESTMENT. The Conveyancing Act, 1881, § 37, empowers trustees to compound and compromise debts, claims, &c., and gives them extensive powers of managing estates belonging to infants, and of applying the income. Lord St. Leonard's Act (Stat. 22 and 23 Vict. c. 35) gives trustees a statutory indemnity for losses not caused by their own acts or defaults, and a power to reimburse themselves for their expenses. (*See* Shelf. R. P. Stat. 724.) As to the power of trustees of wills to pay debts, *see* EXECUTOR, § 6; as to the power of trustees to apply to the court for advice, *see* EXECUTOR, § 10.

§ 8. **Action for execution of trust.**—If a trustee cannot safely administer a trust, he may institute an action to have it executed by the court; or, in a proper case, place the trust fund in the hands of the court. If a trustee refuses or neglects to administer the trust, or is guilty of a breach of trust, or the like, any beneficiary may institute an action for the execution of the trust by the court. (*See* ADMINISTRATION; DISCRETION; EXECUTOR, § 12.) The powers of trustees are suspended by the institution of a suit for the execution of the trusts, and they can only act with the sanction of the court. Wats. Comp. Eq. 892.

Trustees are of two kinds, active and passive. Umlin Trust. 3; *see* TRUST, § 11.

§ 9. **Active.**—An active trustee is one who has to perform administrative duties, such as managing the trust property, receiving income and paying it over to the *cestui que trust*, &c. The duties and liabilities

of such trustees are of infinite variety; but it may be said generally that a trustee is bound to take the same care in acting for his *cestui que trust* as he would, if a prudent man, in acting for himself (Lew. Trusts 260; Wats. Comp. Eq. 892); and that he must not derive or attempt to derive any benefit from the trust (Lew. Trusts 243; Wats. Comp. Eq. 885), unless he is authorized to do so by the *cestui que trust* or the terms of the trust. *See* BREACH OF TRUST; DISCRETION; NEGLIGENCE.

§ 10. **Passive.**—A passive trustee is one in whom property is vested simply for the benefit of another person. In such a case the trustee is bound to convey the property to the *cestui que trust*, or to dispose of it as he may direct, when the time comes for the *cestui que trust* to deal with it, and in the meantime to hold it on his behalf. Lew. Trusts 18; Umlin 3; Wats. Comp. Eq. 891.

§ 11. **Bare, or dry.**—When the duties of an active trustee have come to an end, or when the time for the *cestui que trust* to claim possession of the trust property has come, so that in either case the trustee is compellable to convey the property to the *cestui que trust*, or deal with it according to his directions, then the trustee is called a "bare," or "dry trustee." (*See* Lysaght v. Edwards, 2 Ch. D. 509; L. R. 5 H. L. 356.) As to the meaning of the term as used in the Land Transfer Act, 1875, § 48, *see* Christie v. Ovington, 1 Ch. D. 279; Morgan v. Swansea Urban Sanitary Authority, 9 Ch. D. 582. The use of the expression "bare trustee" in the Fines and Recoveries Act (3 and 4 Will. IV. c. 74, §§ 27, 31) has not been explained.

§ 12. **Public trustees.**—As to trustees acting on behalf of the public, or a section of the public, or a large body of persons. Such trustees, if they have any active duties to perform, are usually remunerated for their trouble, while ordinary trustees (*supra*, § 2) rarely are. An important example of this kind of trustee is the trustee in a bankruptcy or liquidation. *See* TRUSTEE IN BANKRUPTCY.

§ 13. **Trustee for company.**—When a company is intended to be formed, it is sometimes found convenient to appoint a person as "trustee on behalf of the intended company" to enter into contracts,

&c., on behalf of the company, the trustee having no personal interest in them. The object generally is to enter into such arrangements for the purchase of property as may serve as a basis for the operations of the company, but so as not to be binding until the company is formed and adopts them. For an example, see *In re Western of Canada Oil, &c. Co.*, 1 Ch. D. 115. See FRAUD, § 16; PROMOTER; RATIFICATION, § 2.

§ 14. **Trustee of loan.**—When a loan or issue of debentures, bonds, or the like, is created by a corporation or foreign government, and is intended to be secured by a charge on property, trustees are frequently appointed on behalf of the holders of the bonds or stock to receive and administer the property or the income thereof for their benefit, subject to provisions contained in a document called a "trust deed." See *National Bolivian Navigation Co. v. Wilson*, 5 App. Cas. 176.

As to trustees of charities, see CHARITABLE TRUSTS ACT; OFFICIAL TRUSTEE OF CHARITABLE FUNDS; OFFICIAL TRUSTEE OF CHARITY LANDS; SUCCESSION, § 2.

§ 15. Trustee is also used in a wide, and, perhaps, inaccurate sense, to denote that a person has the duty of carrying out a transaction, in which he and another person are interested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neglect the interests of the other. In this sense, directors of companies are said to be "trustees for the shareholders." (*Ferguson v. Wilson*, 2 Ch. 77; *Great Eastern Rail. Co. v. Turner*, 8 Ch. 149.) The essential difference is, that a trustee owns the trust property and deals with it as principal, subject to his equitable obligation towards his *cestui que trust*, while a director is rather an agent with a limited authority. *Smith v. Anderson*, 15 Ch. D. 275.

TRUSTEE, (covenant by). 4 Conn. 495.

—— (lessee may be held as). 11 Mass. 487.

TRUSTEES, (in a statute). 1 Edw. (N. Y.) Ch. 311; 5 Redf. (N. Y.) 458; L. R. 3 Ch. 787.

TRUSTEE ACTS are the Stats. 13 and 14 Vict. c. 60, and 15 and 16 Vict. c. 55, passed to enable the Court of Chancery (now the High

Court of Justice, on petition presented in the Chancery Division,) to appoint new trustees of a settlement, will or other instrument creating a trust, whenever a trustee's death, lunacy, absence or refusal to act, or other reason, makes it necessary to apply to the court; in other words, when the power of appointing new trustees contained in the instrument, or provided by statute, cannot be exercised. (See TRUSTEE, §§ 5, 6.) They also empower the court, where property is held upon trust or mortgage by a lunatic or person of unsound mind, or out of the jurisdiction of the court, to transfer it by a vesting order (*q. v.*) to some other person, or to make an order appointing some person to execute a deed in the place of a trustee or mortgagee, so as to give it the same effect as if the trustee or mortgagee had executed it. *Lew. Trusts; Shelf. R. P. Stat. 647; Dan. Ch. Pr. 1798; Pope Lun. 283. See PETITION.*

TRUSTEE IN BANKRUPTCY.—

§ 1. A trustee in bankruptcy is a person in whom the property of a bankrupt is vested in trust for the creditors, (not for the bankrupt. *In re Leadbitter*, 10 Ch. D. 388; *Ex parte Sheffield*, *Id.* 434.) His duty is to discover, realize and distribute it among the creditors, and for that purpose to examine the bankrupt's property, accounts, &c., to investigate proofs made by creditors, and to admit, reject, expunge or reduce them, according to circumstances. (See PROOF, § 6 *et seq.*) He also has to keep various accounts of his dealings with the property, and of the course of the bankruptcy, which are audited by the committee of inspection and the comptroller in bankruptcy. *Robson 488.*

Trustees may be divided into two classes.

§ 2. **Ex officio trustee.**—Until a trustee is specially appointed in a bankruptcy, and during any vacancy in the office, the registrar having jurisdiction in the matter is *ex officio* trustee. *Bankruptcy Act, 1869, § 17.*

§ 3. **Trustee by appointment.**—The creditors at the first meeting in the bankruptcy (see BANKRUPTCY, § 7), have to appoint, by resolution, some fit person to be trustee, and fix the security to be given by him; the appointment is reported to the court, and the court, upon being satisfied that the requisite security has been entered into, gives a certificate declaring him to be trustee. *Bankruptcy Act, 1869, §§ 14, 18.*

§ 4. **Trustee under liquidation.**—When the creditors of an insolvent debtor resolve that his affairs shall be liquidated by arrangement and not in bankruptcy, they appoint a trustee, who has, in almost all respects, the same powers and duties as a trustee in bankruptcy. *Bankruptcy Act, 1869, § 125.*

TRUSTEE OF AN EXPRESS TRUST, (who is not). 32 Cal. 111.

—— (may bring an action in his own name). 34 Cal. 136.

TRUSTEE PROCESS.—A species of foreign attachment in use in the New

England States. See ATTACHMENT, § 2; FOREIGN ATTACHMENT; GARNISHMENT.

TRUSTEE RELIEF ACTS.—In England, if a person has in his hands a sum of money subject to a trust, and he does not know who is beneficially entitled to it, he may, instead of incurring the responsibility of paying it to the wrong person, or of instituting an action for the execution of the trust, pay it into court under the Trustee Relief Acts, 10 and 11 Vict. c. 96, and 12 and 13 Vict. c. 74. He must file in the Chancery Division an affidavit explaining the difficulty, and giving the names of the persons whom he believes to be interested in the money, and must give them notice as soon as it has been paid into court. Any person claiming to be interested may then present a petition, or issue a summons for payment of the money to him, and the question whom the money belongs to is then decided by the court. (See Hunt, Eq. 230 *et seq.*; Dan. Ch. Pr. 1784; Chancery Fund Rules, 1874.) As to who is a trustee within the meaning of the act, see *Matthew v. Northern Insurance Co.*, 9 Ch. D. 80.

TRUSTER.—The creator of a trust.

TRUTH, (in pleading, distinguished from "fact"). 10 How. (N. Y.) Pr. 377, 379; 4 E. D. Smith (N. Y.) 34.

TRY, (in a statute). 1 Russ. & G. (Nov. Sc.) 97.

TRY A CASE, (construed). 57 N. H. 503, 505.

TRY AND DETERMINE, (in a statute.) 1 Dowl. & Ry. 10.

TUBMAN is (or was) a barrister in the Exchequer Division of the English High Court, ranking (apparently) next after the postman (*q. v.*) *R. v. Bishop of Exeter*, 7 Mees. & W. 188.

TUGS.—Steam vessels that take ships in tow, either upon entering or upon leaving ports. Although the tug is the moving power, still it is under the control of the master or pilot on board the ship in tow; and it is only when no directions are given by the latter, that the tug is free to direct the course. The two vessels are respectively controlled in other respects by their respective crews, who are respectively liable for negligence. A tug may, under exceptionally dangerous circumstances, become entitled for services rendered, to salvage, either in lieu of or in addition to towage; but, of course, not so when the services are rendered necessary through the tug's own negligent towage. (Kay Sh. & S. 908, 1042-1047.)—*Brown*.

TUMBRELL.—A castigatory, or dung cart.

TUMULTUOUS PETITIONING.—By 13 Car. II. st. 1, c. 5, it is enacted that not more than twenty names shall be signed to any

petition to the crown or either house of parliament for any alteration of matters established by law in church or state: unless the contents thereof be previously approved in the country by three justices, or the majority of the grand jury at the assizes or quarter sessions; and in London by the lord mayor, aldermen and common council; and that no petition shall be delivered by a company of more than ten persons, on pain of incurring a penalty not exceeding £100 and three months' imprisonment. (See, also, 57 Geo. III. c. 19, s. 23; Broom & H. Com. i. 170, iv. 171; 4 Steph. Com. (7 edit.) 255.)—*Wharton*.

TUN.—Four hogshheads.

TUNGREVE.—A town-reeve or bailiff.—*Cowell*.

TURBARY.—The liberty of digging turf upon another man's ground. It may be either by grant or prescription, and either appurtenant or in gross. It can be appurtenant only to a house, and can only be a right to take turf for fuel for such house. 1 Steph. Com. (7 edit.) 653. See COMMON, § 13.

TURN, or TOURN.—The great court-leet of the county, as the old county court was the court baron; of this the sheriff is judge, and the court is incident to his office; wherefore it is called the "sheriff's tourn;" and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred. 2 Hawk. P. C. c. x.

TURNKEY.—A gaoler.

TURNPIKE ROADS.—Ways maintained out of tolls paid by passengers.

TURNPIKE ROADS, (what are). 5 El. & B. 466; 22 Eng. L. & Eq. 113; 17 Jur. 1181; 22 L. J. Q. B. n. s. 380; 8 Mees. & W. 428.
 — (are highways). 4 Pick. (Mass.) 258; 16 Id. 175; 20 Johns. (N. Y.) 742.
 — (shares in, are not chattels). 17 Mass. 243.

TURPIS CAUSA.—A base or vile consideration on which no action can be founded.

Turpis est pars quæ non convenit cum suo toto (Plowd. 161): That part is bad which accords not with its whole.

Tuta est custodia quæ sibi met creditur (Hob. 340): That guardianship is secure which is entrusted to itself alone.

TUTELAGE.—Guardianship; state of being under a guardian. Sand. Just. (5 edit.) 52, 70.

TUTEUR OFFICIEUX.—In French law, a person over fifty years of age may be appointed a tutor of this sort to a child over fifteen years of age, with the consent of the parents of such child, or (in their default) the *conseil de*

franchise. The duties which such a tutor becomes subject to are analogous to those in English law of a person who puts himself *in loco parentis* to any one.—*Brown*. See *IN LOCO PARENTIS*.

TUTEUR SUBROGÉ.—In French law, in the case of an infant under guardianship, a second guardian is appointed to him, the duties of the latter (who is called the "*subrogé tuteur*") only arising where the interests of the infant and his principal guardian are in conflict. (Code Nap. 420.)—*Brown*.

Tutius erratur ex parte mitiore (3 Inst. 220): It is safer to err on the gentler side.

Tutius semper est errare acquitando quam in puniendo, ex parte misericordiæ quam ex parte justitiæ (H. H. P. C. 290): It is always safer to err in acquitting than in punishing; on the side of mercy than of strict justice.

TUTOR.—A guardian; a protector; an instructor.

TUTORSHIP.—The office and power of a tutor.

TUTRIX.—A female tutor.

TWANIGHT GESTE.—A guest at an inn a second night.—*Cowell*. See **THIRD-NIGHT-AWN-HINDE**.

TWELFHINDL.—The highest rank of men in the Saxon government, who were valued at 1200s. If any injury were done to such persons, satisfaction was to be made according to their worth.—*Cowell*.

TWELVE-DAY-WRIT.—A writ issued under the 18 and 19 Vict. c. 67, for summary procedure on bills of exchange and promissory notes. 2 Chit. Arch. Pr. (12 edit.) 1005.

TWELVE MONTHS, (in a bond). 6 East 507.

TWELVE MONTHS CERTAIN, (in contract of service). L. R. 9 Ex. 57.

TWELVE TABLES.—A system of laws (civil and criminal), drawn up in B. C. 450, and

extending the protection of the law to the plebeians as well as to the patricians.

TWELVEMONTH.—In the singular, a year; but twelve months (plural) are often computed according to twenty-eight days for each month. 6 Co. 62.

TWENTY-FOUR MONTHS, (in a bond). 7 T. B. Mon. (Ky.) 262.

TWENTY-ONE, (legacy payable at). 3 Atk. 427.

TWICE IN JEOPARDY.—See **JEOPARDY**; **ONCE IN JEOPARDY**.

TWICE PUT IN JEOPARDY, (in constitution of United States). 26 Ark. 260, 264.

— (in constitution of California). 48 Cal. 328.

— (in constitution of Kentucky). 9 Bush (Ky.) 333; 15 Am. Rep. 715, 719.

TWO-THIRDS, (in State constitution). 12 So. Car. 202.

TWO YEARS AFTER DEMAND, (promissory note payable). 8 Dowl. & Ry. 347.

TWYHINDL.—The lower order of Saxons, valued at two hundred shillings in the scale of pecuniary mulcts inflicted for crimes.—*Cowell*.

TYBURN TICKET.—A certificate which was given to the prosecutor of a felon to conviction.

TYHTLAN.—An accusation, impeachment or charge.—*Cowell*.

TYLWITH.—A tribe; house; or family.—*Cowell*.

TYRANNICIDE.—The slaughter of a tyrant.

TYRRA, or TOIRA.—A mount or hill.—*Cowell*.

TYTHE.—Tithe, or tenth part.

TYTHING.—A company of ten; a district; a tenth part. See **TITHING**.

U.

U. R.—(Initials of *uti rogas*, be it as you desire), a ballot, thus inscribed, by which the Romans voted in favor of a bill or candidate. Tayl. Civ. L. 191.

UBERRIMÆ FIDELI.—Of the fullest confidence. A contract is said to be *uberrimæ fidei* when the promisee is bound to communicate to the promisor every fact and circumstance which may influence him in deciding to enter into the contract or not. Thus, a policy of

marine insurance is a contract *uberrimæ fidei*. *Goram v. Sweeting*, 2 Wms. Saund. 200, n. (1). See **INSURANCE**.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest: When any thing is granted, that also is granted without which it could not exist.

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimen-

tum: Where any thing is impeded by some one particular cause, that cause being removed, the impediment is taken away.

Ubi cessat remedium ordinarium ibi decurritur ad extraordinarium et nunquam decurritur ad extraordinarium ubi valet ordinarium: Where the ordinary remedy fails, recourse is had to the extraordinary remedy, but recourse is never had to the extraordinary where the ordinary is sufficient.

Ubi culpa est, ibi poena subesse debet: Where there is culpability, there punishment ought to be submitted to.

Ubi damna dantur victus victori in expensis condemnari debet (2 Inst. 289): Where damages are awarded the unsuccessful party ought to be condemned in costs to the successful party.

Ubi eadem ratio, ibi eadem lex; et de similibus idem est iudicium (7 Co. 18): Where the same reason exists, there the same law prevails; and of things similar, the judgment is similar.

Ubi factum nullum, ibi fortia nulla: Where there is no principal fact, there can be no accessory.

Ubi jus, ibi remedium (Co. Litt. 197 b): Where there is a right there is a remedy. This maxim was the foundation of equity interfering in aid of the common law, when (but for some technical defect) the common law itself would have given the remedy.

An action will lie for an injury although no actual damage be sustained, as in the case of *Ashby v. White*, (temp. 2 Anne 1704, 14 St. Tr. 695,) when it was decided that an action lay against a returning officer for refusing to admit the vote of a duly qualified elector, although the persons for whom he tendered his votes were elected. There may be a "*damnum absque injuria*" (loss without a wrongful act) for which no action will lie. Thus, no action will lie against my neighbor, who builds on his own land a mill, whereby the profits of my mill (built on adjoining property) are diminished, although in the case put I may have suffered considerable loss. This maxim formed the root of all equitable decisions, and was the basis upon which the Court of Chancery originally acted, when interfering with courts of law, or in supplying remedies for those wrongs which the latter failed to redress.

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima (2 Inst. 289): Where the law compels a man to show cause, it is necessary that the cause be just and lawful.

Ubi lex est specialis, et ratio ejus generalis generaliter accipienda est (2 Inst. 43): Where the law is special, and the reason of it general, it ought to be taken as being general.

Ubi lex non distinguit, nec nos distinguere debemus (7 Co. 5 b): Where the law does not distinguish, neither ought we to distinguish.

Ubi major pars est, ibi totum (Moor 578): Where the greater part is, there the whole is. That is, majorities govern.

Ubi non est annua renovatio, ibi decimæ non debent solvi: Where there is no annual renovation, there tithes ought not to be paid.

Ubi non est condendi auctoritas, ibi non est parendi necessitas (Dav. 69): Where there is no authority for establishing a rule, there is no necessity of obeying it.

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia (Ellesm. Posn. 41): Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases.

Ubi non est lex, ibi non est transgressio, quoad mundum (4 Co. 16 b): Where there is no law, there is no transgression, as far as relates to the world.

Ubi non est principalis non potest esse accessorius (4 Co. 43): Where there is no principal, there cannot be an accessory.

Ubi nullum matrimonium ibi nulla dos: Without matrimony there is no dower. As to the application of this maxim, see Co. Litt. 32.

Ubi quid generaliter conceditur inest hæc exceptio, si non aliquid sit contra jus fasque (10 Co. 78): Where a thing is conceded generally this exception arises, that there shall be nothing contrary to law and right.

Ubi verba conjuncta non sunt sufficit alterutrum esse factum (D. 50, 17, 110, s. 3): Where words are not conjoined, it is enough if one or other be complied with.

UBICATION, or UBIETY.—Local position.—*Encycl. Lond.*

UDAL.—Allodial (*q. v.*)

ULLAGE.—The quantity of fluid which a cask wants of being full, in consequence of the oozing of the liquor.—*Malone.*

ULNA FERREA.—The standard ell of iron, which was kept in the Exchequer for the rule of measure. Mon. Ang. iii 383.

ULNAGE.—Alnage (*q. v.*)

ULPIAN.—A great Roman jurist. He flourished in the time of Alexander Severus,

about A. D. 222. The Code of Justinian is in great part founded on his works.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam (Co. Litt. 322): The last will of a testator is to be fulfilled according to his true intention.

ULTIMATELY, (in a guaranty). 6 Me. 60.

ULTIMATUM, or ULTIMATION.

—The last offer, concession or condition.

ULTIMUM SUPPLICIUM.—The last or extreme punishment; death.

ULTIMUS HAERES.—In the Scotch law, the last or remote heir; this is the sovereign, who succeeds, failing all relations.

ULTRA.—Damages *ultra*, damages beyond a sum paid into court.

ULTRA MARE.—Beyond sea. One of the old essoins or excuses for failing to appear in court. *See* ESSOIN.

ULTRA VIRES, in the law of corporations, is used in two senses.

§ 1. **Of a corporation itself.**—A contract or similar act is said to be *ultra vires* of a corporation when it purports to be entered into or done in pursuance of the powers conferred on the corporation, but is really beyond them. Thus, if a company is incorporated for the purpose of constructing a railway, it cannot, under the powers thereby conferred on it, construct a harbor, and any act done in the name of the company with that object is wholly void, even if sanctioned by all the members of the company; *à fortiori*, therefore, a majority of the shareholders cannot bind a dissentient minority by any such act. (Hodg. Railw. 60 *et seq.*; Brice U. V. 52 *et seq.*; Ashbury, &c., Co. v. Riche, L. R. 7 H. L. 653.) But the doctrine does not apply to those things which are fairly incidental to what the company is empowered to do, although they may not be expressly authorized. (Att.-Gen. v. Great Eastern Rail. Co., 5 App. Cas. 473.) It is said that the term "*ultra vires*" is used in another sense to signify that a certain act is not void as being beyond the powers of the corporation, but that it is not binding on the members who dissent from it because it is contrary to some provision, express or implied, for the protection of the shareholders; on this principle, if a

company, being possessed of funds appropriated for a certain purpose, applied them to another purpose within their general powers, that appropriation would be *ultra vires* and only binding on the shareholders who consented to it. (*See* Brice U. V. 52 *et seq.*; Taylor v. Chichester Rail. Co., L. R. 2 Ex. 378) Since the decisions in Taylor v. Chichester Rail. Co. (L. R. 4 H. L. 628) and Ashbury Co. v. Riche (L. R. 7 H. L. 653, as explained by Att.-Gen. v. Great Eastern Rail. Co., 5 App. Cas. 473,) it is doubtful whether this distinction can be maintained.

§ 2. **Of directors, &c.**—*Ultra vires* is also sometimes applied to an act which, though within the powers of a corporation, is not binding on it because the consent or agreement of the corporation has not been given in the manner required by its constitution. Thus, where a company delegates certain powers to its directors, all acts done by the directors beyond the scope of those powers are *ultra vires*, and not binding on the company, unless it subsequently ratifies them. An act which is *ultra vires* in the primary sense of the word (§ 1) is incapable of ratification.

ULTRA VIRES, (as used in reference to corporate acts). 37 Cal. 543; 43 Iowa 48; 71 Me. 472, 474.

UMPIRAGE.—Friendly decision of a controversy; arbitration.

UMPIRE.—In a submission to the arbitration of two or more persons it is usual to provide that if the arbitrators do not agree upon their award before a certain time, another person shall be called in as umpire, by whose award the parties shall be bound. The award of an umpire is sometimes called an "umpirage." 3 Bl. Com. 16; Sm. Ac. 460. *See* ARBITRATION; REFER.

UMPIRE, (when arbitrators may choose). 17 Johns. (N. Y.) 405; 15 East 556.

— (may take what advice he pleases). 2 Johns. (N. Y.) Ch. 330.

— (an award is the act of). 2 Watts (Pa.) 75.

UMQUHILE.—Deceased.

Un ne doit prise advantage de son tort demesne (2 And. 38, 40): One ought not to take advantage of his own wrong.

Una persona vix potest supplere vices duarum (7 Co. 118): One person can scarcely supply the places of two. *See* Beamish v. Beamish, 9 H. L. Cas. 274.

UNA VOCE.—With one voice; unanimously; *e. g.* a unanimous judgment of a court.

UNALIENABLE.—That which is incapable of being sold, as a pension, or the right to life or liberty.

UNANIMITY.—The complete agreement of a jury in their verdict. This is uniformly required in English and American practice.

UNASCERTAINED DUTIES, (defined). 5 Blatchf. (U. S.) 274.

UNAVOIDABLE ACCIDENT, (what is). 67 Me. 203, 205.

— (synonymous with "inevitable accident"). 21 Tex. 626.

— (in a bond). 1 Brock. (U. S.) 175, 187.

UNAVOIDABLE ACCIDENTS, (in a contract). 50 Ga. 509.

UNAVOIDABLE CASUALTY, (in a lease). 3 Gray (Mass.) 323.

UNAVOIDABLE DANGERS OF THE RIVERS, (in a bill of lading). 8 Serg. & R. (Pa.) 538.

UNBEQUEATHED, ALL THINGS NOT BEFORE, (in a will). 1 P. Wms. 302.

UNBORN PERSON, (in a statute). L. R. 20 Eq. 182.

UNBORN PERSONS.—*See* IN VENTRE SA MERE; PERPETUITY.

UNCEASESATH.—An oath by relations not to avenge a relation's death.—*Blount*.

UNCERTAIN AND CONTINGENT DEMANDS, (under bankrupt act). 2 Gray (Mass.) 111.

UNCERTAINTY.—

§ 1. **Wills.**—In the law of wills, the general rule is that where a testator has so expressed himself that it is impossible to ascertain what his intention was, the gift or provision so made is void for uncertainty. Thus, a will consisting merely of these words, "I leave and bequeath to all my grandchildren, and share and share alike," is too uncertain to be operative, although it may be conjectured that the word "all" was meant to precede "to," for words will only be transposed when they are inconsistent with the context, not when they are merely unnecessary. *Jarm. Wills* 856; *Mohun v. Mohun*, 1 Sw. 201.

§ 2. **Pleading.**—In pleading, the general rule is that whatever is alleged must be alleged with certainty. (*Steph. Pl.* (7 edit.)

275.) An allegation suffering from the defect of uncertainty is apparently liable to be struck out as embarrassing. *See* AMENDMENT, § 2.

UNCERTAINTY, (devise void for). 7 Jur. 523, 1125.

— (limitation void for). 5 Beav. 77.

— (trust not void for). 1 Hare 580.

UNCIA.—In the Roman and old English law, an ounce, or the twelfth part of a pound. *See* AS.

UNCIA AGRI—UNCIA TERRÆ.—These phrases often occur in the charters of the British kings, and signify some measure or quantity of land. It is said to have been the quantity of twelve *modii*; each *modius* being possibly one hundred feet square. (3 Mon. Angl. 198.)—*Jacob*.

UNCIARIUS HÆRES.—In the Roman law, an heir to one-twelfth of an estate.—*Calv. Lex*.

UNCLAIMED DIVIDENDS.—In English bankruptcy practice, dividends remaining unclaimed for five years are forfeited to the government (Bankruptcy Act, 1869, § 116); but may, upon satisfactory proof of right thereto, be paid over to the creditors entitled. (38 and 39 Vict. c. 77, § 32.) And in Chancery, the lord chancellor may, under Stat. 16 and 17 Vict. c. 98, § 3, order dividends unclaimed for fifteen years to be carried to "the suitors' unclaimed dividend account;" and these, under 32 and 33 Vict. c. 91, are transferred to the public on their indemnity. Dividends not being claimed for ten years on stock in the Bank of England, the stock is forthwith transferred to the government on the like indemnity.—*Brown*.

UNCLE AND NEPHEW.—A nephew, the son of a deceased elder brother, is preferred in the inheritance to his uncle, a younger brother of the deceased.

UNCOMMONLY RICH WATER MEADOW LAND, (in a contract). 1 Russ. & M. 128; 1 Sim. 12.

UNCONSCIONABLE BAR-GAINS.—These are void on the ground of fraud, apart even from the ability or inability of the party to contract, and solely from a regard to public policy.

UNCONSTITUTIONAL.—That which is contrary to the constitution. The opposite of "constitutional" (*q. v.*)

UNCONSTITUTIONAL, (when a court will declare a law to be). 6 Cranch (U. S.) 87; 4 Dall. (U. S.) 19.

UNCONSTITUTIONAL LAW, (will be considered by the courts as null and void). 2 Otto (U. S.) 531.

UNCONTROLLED AND IRRESPONSIBLE, (in a marriage settlement). 10 Ch. D. 273.

UNCORE PRIST.—Still ready. The Norman-French name for the plea or defense which a defendant sets up when he is sued on a contract for something which he is "still ready" to do up to the time when he puts in his defense. It generally follows a plea of "*touts temps prist*" (q. v.) (Co. Litt. 207 a; Leake Cont. (2 edit.) 858.) For an instance, see TENDER.

UNCULTIVATED OR UNOCCUPIED, (in a statute). 2 Chit. Gen. Pr. 244.

UNCUTE.—Unknown.—*Cowell*.

UNDE NIHIL HABET.—See WRIT OF DOWER.

UNDER CHAMBERLAINS OF THE EXCHEQUER.—Two officers who cleaved the tallies written by the clerk of the tallies, and read them so that the clerk of the pell and the comptrollers might see that their entries were true. They also made searches for records in the treasury, and had the custody of Domesday Book. Abolished.

UNDER LEGAL DISABILITY, (in a statute). 26 Ind. 419.

UNDER-SHERIFF.—The sheriff's deputy. See SHERIFF.

UNDER-TENANT.—One who holds by under-lease, from a lessee. Between the original lessor and an under-tenant there is neither privity of estate nor privity of contract, so that these parties cannot take advantage, the one against the other, of the covenants, either in law or in deed, which exist between the original lessor and lessee. Watk. Conv. 308.

UNDER THE CIRCUMSTANCES OF THE CASE, (in a statute). 4 Cranch (U. S.) 62, 68.

UNDER THE LAW, (in a statute). 8 How. (U. S.) 345, 366.

UNDER THE SAME RENTS AND COVENANTS, (in a lease). Cowp. 819.

UNDER TREASURER OF ENGLAND.—He who transacted the business of the lord high treasurer.

UNDERLEASE—UNDERLESSOR—UNDERLESSEE.—An underlease is a lease granted by a lessee or tenant for years; in speaking with reference to the underlease, he is called the "underlessor," and the person to whom the underlease is granted is

called the "underlessee." (Woodf. Land. & T. 11, 241.) As the underlessee is not liable to the original lessor on the covenants, &c., of the original lease, a mortgage of leaseholds is generally made by underlease, and not by assignment. See MORTGAGE, § 4.

Another common instance of an underlease is where land is let on building lease, and the lessee grants underleases of the houses erected by him. See RENT, § 5; also, ASSIGNMENT; LEASE.

UNDERLEASE, (defined). Com. L. & T. 51.

— (what is). 2 Barn. & C. 251.

— (distinguished from an "assignment"). Str. 405; 3 Wils. 234.

UNDERLET, (in a covenant). 1 Esp. 9.

UNDERLETTING, (letting lodgings is not). 4 Campb. 76.

— (in a covenant). 27 Barb. (N. Y.) 415.

UNDERSTAND, (in a statute). 2 T. R. 121.

UNDERSTANDING, (synonymous with "agreement"). 47 Wis. 501.

UNDERSTOOD, (as applied by a witness to his own agreement). 11 So. Car. 56.

— (in a will). 2 Cox Ch. 16.

UNDERSTOOD, IT IS, (equivalent to "it is agreed"). 14 Gray (Mass.) 165, 170.

UNDERTAKE TO PAY, WE, (in an agreement). 3 Barn. & Ald. 47, 50.

UNDERTAKING.—

§ 1. In the primary sense of the word, an undertaking is a promise. In the old books "undertaker" means a promisor. *Birkmyr v. Darnell*, 1 Salk. 27.

§ 2. "Undertaking" is frequently used in the special sense of a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. Thus, where an *interim* or *ex parte* injunction is granted, the court generally requires the plaintiff to give an undertaking as to damages; i. e. he must undertake that if it should subsequently turn out that he was not entitled to the injunction, and that its operation has caused injury to the defendant, he will pay to the defendant damages for the injury so sustained.

So, if an application is made for an injunction, and the defendant asks that it may be adjourned, he is generally required to give an undertaking not to commit the acts complained of in the meantime; if it is a question of infringement of a patent or the like, he sometimes undertakes to

keep an account of all articles made or sold by him during the period of the adjournment. Seton Dec. 344.

An undertaking may be enforced by attachment, or otherwise, in the same manner as an injunction. Seton Dec. 297.

§ 3. An undertaking to appear in an action is a promise by a solicitor or attorney that he will enter an appearance for his client; such an undertaking is given when the attorney accepts service of a writ or summons in order to save his client the annoyance of personal service. See SERVICE, § 12

§ 4. **Undertaking of company.**—In the English Lands Clauses Consolidation Act, 1845, the Companies Clauses Act, 1845, and similar acts, applying to companies incorporated for the construction of railways, docks and similar works, "undertaking" means the works or undertaking, of whatever nature, which are authorized by the special act incorporating the particular company. The question what is included in the "undertaking" of a company principally arises in cases where a company has created a mortgage or charge on its undertaking to secure debentures, or the like. It seems that such a charge operates on all the property and revenues of the company, as a going concern, at the time when the security requires to be enforced. *Gardner v. L. C. & D. Rail. Co.*, L. R. 2 Ch. 201; *Hodg. Railw.* 125; *In re Panama, &c., Co.*, L. R. 5 Ch. 318. See DEBENTURE, p. 350, n. (B); SECURITY, § 9.

UNDERTAKING, (does not, *ex vi termini*, import a consideration). 3 N. Y. 335.

— (of a railway company). L. R. 2 Ch. 201.

UNDERTAKING TO APPEAR.—See UNDERTAKING, § 3.

UNDERTOOK, (in a declaration). 6 Barn. & C. 268.

UNDERTOOK AND PROMISED, (in a declaration in assumpsit). 10 Wend. (N. Y.) 487.

UNDERWOOD, (what is not). 1 Barn. & C. 375.

UNDERWOOD, ALL WOOD AND, (an exception of in a lease). Com. L. & T. 78.

UNDERWRITER.—A person who joins with others in entering into a marine policy of insurance as insurer. Except where an insurance is effected with a company, a policy of marine insurance is generally entered into by a number of persons, each of whom makes himself liable for a certain sum, so as to divide the risk; they subscribe or underwrite the policy in lines one under another, and hence to subscribe a policy is sometimes called "taking a line." Policies are

usually effected through brokers. Maude & P. Mer. Sh 331, 334. See ADJUSTMENT; INSURANCE; POLICY.

UNDISCHARGED BANKRUPT, or DEBTOR.—See BANKRUPTCY, p. 111, n.; DISCHARGE, § 4.

UNDIVIDED, (defined). 16 Pick. (Mass.) 87, 98.

UNDRES.—Minors or persons under age not capable of bearing arms.—*Fleta*, l. 1, c. ix.; *Cowell*.

UNDUE INFLUENCE.—

§ 1. **Equity.**—The equitable doctrine of undue influence is that where a person enters into an agreement or disposition of property under such circumstances as to show or give rise to the presumption that he has not been allowed to exercise a free and deliberate judgment on the matter, the court will set it aside. Such a presumption chiefly arises in cases where the parties stand in a relation implying mutual confidence; *e. g.* a parent and child, guardian and ward, trustee and *cestui que trust*, legal adviser and client; but it may be rebutted by showing that the transaction was in fact reasonable and entered into in good faith. 2 White & T. Lead. Cas. 571; Poll Cont. 508.

§ 2. **Will.**—Where a person is induced to execute a will by undue influence, it is liable to be invalidated, or at least so far as the undue influence extends. Such cases chiefly arise where a testator is in feeble health, bodily or mentally, and therefore liable to be influenced by those near him. See *Jarm. Wills* 35 *et seq.*

§ 3. **Elections.**—Undue influence at elections is where any one interferes with the free exercise of a voter's franchise, by violence, intimidation or otherwise. It is a misdemeanor. 1 Russ. Cr. & M. 321; Steph. Cr. Dig. 79.

UNDUE PREFERENCE, (distinguished from a mere preference). 2 Am. L. J. 187.

UNEEXECUTED TESTAMENTARY PAPER, (distinguished from one that is imperfect in other respects). 2 Addams 354.

UNEEXECUTED WRIT, (in a statute). 1 Harr. (N. J.) 154.

UNFAIRLY, (is tantamount to "illegal"). 1 Dall. (U. S.) 383.

UNFINISHED BUSINESS, (in constitution of Georgia). 39 Ga. 39.

UNFRID.—One who has neither peace nor quiet.

UNGELD.—An outlaw.

UNICA TAXATIO.—The obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default.

UNIFORM, (not equivalent to "universal"). 17 Cal. 547.

— (as applied to taxation). 4 Cal. 46.

UNIFORM OPERATION, (of a law). 5 Iowa 491, 500; 15 *Id.* 127.

UNIFORMITY, ACT OF.—The statute which regulates the terms of membership in the Church of England and the colleges of Oxford and Cambridge, 13 and 14 Car. II. c. 4. (*See* 9 and 10 Vict. c. 59.) The act of uniformity has been amended by the 35 and 36 Vict. c. 35, which *inter alia* provides a shortened form of morning and evening prayer.

UNIFORMITY OF PROCESS ACT.—The title commonly given to the statute 2 Will. IV. c. 39, by which a more simple and uniform course of proceeding for the commencement of personal actions was established at common law. Until the passing of that act, the practice or forms of proceeding in the three superior courts at Westminster differed greatly from each other. The improvements introduced by the act were founded on the report of the common law commissioners, a body of men appointed to consider the effects of the then existing system, with a view to its correction. In some important particulars, however, the enactments of the Stat. 2 Will. IV. c. 39, were again altered by the more recent act of 1 and 2 Vict. c. 110; for instance, under the act of Will. IV. an action might be commenced either by a writ of summons or by a *capias*, whereas under the subsequent act it could only be commenced by a writ of summons. More sweeping enactments were afterwards made by the C. L. P. Act, 1852; and the present practice is of course regulated almost exclusively by the Judicature Acts, 1873–75, and the orders and rules thereunder.—*Broun.*

UNIGENITURE.—The state of being the only begotten.

UNILATERAL.—One-sided.

UNILATERAL CONTRACT.—In the civil law, when the party to whom an engagement is made makes no express agreement on his part, the contract is called "unilateral," even in cases where the law attaches certain obligations to his acceptance. A loan of money and a loan for use are of this kind.

UNINCORPORATED RELIGIOUS SOCIETY, (a trust in favor of, when available). 1 Watts (Pa.) 218.

UNINCUMBERED, (land subject to a lease containing a covenant of renewal is not). 5 Abb. (N. Y.) Pr. 28.

UNION.—

§ 1. In the English poor law, a union consists of two or more parishes which have been consolidated for the better administration of the poor law therein. *See* POOR LAW.

§ 2. In ecclesiastical law, a union consists of two or more benefices which have been united into one benefice. Such a union may be made under the Stat. 1 and 2 Vict. c. 106, passed "to abridge the holding of benefices in plurality," and amended by Stat. 13 and 14 Vict. c. 98; and under Stat. 23 and 24 Vict. c. 142, passed "to make better provision for the union of contiguous benefices in cities, towns and boroughs" (in substitution for Stat. 18 and 19 Vict. c. 127), amended by Stat. 34 and 35 Vict. c. 90. As to the union of parishes, *see* PARISH, § 1.

UNION, (in poor law). L. R. 4 Q. B. 592.

UNION-JACK.—The national flag of Great Britain and Ireland, which combines the banner of St. Patrick with the crosses of St. George and St. Andrew. The word Jack is most probably derived from the surcoat, charged with a red cross, anciently used by the English soldiery. This appears to have been called a *jacque*, whence the word *jacket*, anciently written *jaquid*. Some, however, without a shadow of evidence, derive the word from *Jacques*, the first alteration having been made in the reign of King James I.

UNITAS PERSONARUM.—The unity of persons, as that between husband and wife, or ancestor and heir.

UNITE AND CONSOLIDATE, (in statute concerning railroads). 64 Ala. 654, 655.

UNITED STATES CURRENCY, (what includes). 23 La. Ann. 609.

UNITED STATES OF AMERICA.—The nation occupying the territory between British America on the north, Mexico on the south, the Atlantic Ocean and Gulf of Mexico on the east, and the Pacific Ocean on the west; being the republic whose organic law is the constitution adopted by the people of the thirteen States which declared their independence of the government of Great Britain on the fourth day of July, 1776.—*Bouvier.*

UNITY OF INTEREST is applied to joint tenants, to signify that no one of them can have a greater interest in the property than each of the others, while, in the case of tenants in common, one of them may have a larger share than any of the others. Wms. Real Prop. 184, 189. *See* UNITY OF POSSESSION, § 2.

UNITY OF POSSESSION.—

§ 1. **Suspension of easements, &c.**—In the proper sense of the word, unity of possession is where a piece of land which is subject to an easement, *profit à prendre*, rent, or similar right, comes into the possession of the person entitled to the easement or other right. At the present day, “unity of possession” is only applied to cases where the possession is temporary; as, where the owner of land subject to an easement takes a lease of the dominant tenement, so that the easement is suspended by unity of possession during the lease (Gale Easm. 581 *et seq.*); or where the owner of a rent disseises the tenant of the land out of which it issues, so that the rent is suspended by unity of possession. (Co. Litt. 188a.) In the old books, “unity of possession” has a wider sense, and includes what is now more commonly called “unity of seisin” (*q. v.*) *Id.* 313 a; Tyrringham’s Case, 4 Co. 38.

§ 2. **Joint tenants.**—As applied to joint tenants, tenants in common, &c., “unity of possession” is sometimes used to signify that they have an undivided possession. This use of the term seems to have been invented by Blackstone. 2 Bl. Com. 180; Wms. Real Prop. 134. See **JOINT TENANCY**; **PRIVITY**, §§ 4, 8, 9; **TENANCY IN COMMON**.

UNITY OF SEISIN is where a person seised of land which is subject to an easement, *profit à prendre*, or similar right, also becomes seised of the land to which the easement or other right is annexed. The term is usually applied to cases where the seisin is that of a tenant in fee-simple, and is equally high or “perdurable” in both pieces of land, so that the easement or other right is extinguished by the unity of seisin; as where a tenant in fee-simple of land, subject to an easement, acquires an estate in fee-simple in the dominant tenement. But if one piece of land is held by a conditional or determinable estate, then the unity of seisin is insufficient to work an extinguishment. Co. Litt. 313 a, b; Gale Easm. 582 and notes. See **UNITY OF POSSESSION**.

UNITY OF TIME is applied to joint tenants, to signify that the estate of each of them must arise at the same time; *i. e.*

one cannot take his share first, and then another come in after him. This rule, however, does not apply to estates created under the Statute of Uses, or by will Wms. Real Prop. 137. See **UNITY OF INTEREST**; **UNITY OF POSSESSION**, § 2.

UNITY OF TITLE is applied to joint tenants, to signify that they hold their property by one and the same title, while tenants in common may take property by several titles. Wms. Real Prop. 134. See **UNITY OF INTEREST**; **UNITY OF POSSESSION** § 2.

UNIVERSAL AGENT.—One who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. Such an universal agency may potentially exist, but it must be of the rarest occurrence. And, indeed, it is difficult to conceive of the existence of such an agency practically, inasmuch as it would be to make such an agent the complete master, not merely *dux facti* but *dominus rerum*, the complete disposer of all the rights and property of the principal. The law will not from general expressions, however broad, infer the existence of any such universal agency; but it will rather construe them as restrained to the principal business of the party, in respect to which it is presumed his intention to delegate the authority was principally directed. Story Ag. 18.

UNIVERSAL LEGACY.—In the civil law, a testamentary disposition by which the testator gives to one or more persons the whole of the property which he leaves at his decease.

UNIVERSAL PARTNERSHIP.—In the civil law, a species of partnership, by which all the partners agree to put in common all their property, *universorum bonorum*, not only what they then have, but also what they shall acquire.

UNIVERSAL REPRESENTATION.—In the Scotch law, a term applied to the representation by an heir, of his ancestor.—*Bell Dict.*

Universalia sunt notiora singularibus (2 Roll. 294): Things universal are better known than things particular.

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiam si major pars id faciat (Dav. 48): An university or cor-

poration is not said to do anything unless it be deliberated upon collegiately, even though the majority of them do it.

UNIVERSITIES.—See COURTS OF THE UNIVERSITIES.

UNIVERSITY.—A corporation forming one whole out of many individuals; a school where all kinds of literature are taught. As, the University of Oxford.

UNKNOWN, (in an indictment). 3 Campb. 264; Holt 595; 1 Chit. Crim. L. 212, 213.

UNLAGE.—An unjust law.—*Cowell.*

UNLAWFUL.—"Unlawful" and "illegal" are frequently used as synonymous terms, but in the proper sense of the word, "unlawful," as applied to promises, agreements, considerations and the like, denotes that they are ineffectual in law because they involve acts which, although not illegal, *i. e.* positively forbidden, are disapproved of by the law, and are, therefore, not recognized as the ground of legal rights, either because they are immoral (*q. v.*), or because they are against public policy. (See **POLICY**.) It is on this ground that contracts in restraint of marriage or of trade are generally void. As a general rule, an unlawful agreement cannot be enforced, or set aside, nor can money paid or property delivered under it be recovered back: *potior est conditio defendentis*. Poll. Cont. (3 edit.) 250, 348; Chit. Cont. 609 *et seq.* See Wright Cr. Consp. 65 *et seq.*; Reg. v. Prince, L. R. 2 C. C. R. 154.

UNLAWFUL ASSEMBLY.—An assembly of three or more persons with intent to commit a crime by open force, or with intent to carry out any common purpose, lawful or unlawful, in such manner as to give firm and courageous persons in the neighborhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it.

Taking part in an unlawful assembly is a misdemeanor. Steph. Cr. Dig. 40; 1 Russ. Cr. & M. 372. See **AFFRAY**; **RIOT**; **ROUT**.

UNLAWFUL ASSEMBLY, (what is). 3 Crim. L. Mag. 225.

UNLAWFUL CONSPIRACY, (what is). 4 Meta. Mass.) 111, 123.

UNLAWFUL HOLDING, (in act concerning offices). 23 Wend. (N. Y.) 577.

UNLAWFULLY, (in a complaint). 126 Mass. 249.

— (when not necessary in an indictment). 27 Vt. 103; Stark. Cr. Pl. 85.

UNLAWFULLY AND INJURIOUSLY, (in an indictment). 4 Mau. & Sel. 73, 76.

UNLAWFULLY AND MALICIOUSLY, (not equivalent to "willfully and maliciously"). 60 Me. 410.

UNLAWFULLY AND UNJUSTLY, (in a declaration). Willes 577.

UNLAWFULLY, WILLFULLY OR MALICIOUSLY, (when not necessary in an indictment). 2 W. Bl. 842.

UNLESS, (in a policy of insurance). 3 Burr. 1550.

— (in statute concerning promissory notes). 3 Gr. (N. J.) 10, 11; 7 Barn. & C. 266.

— (in a will). 3 Mad. 396; Boyl. Char. 291.

UNLIQUIDATED is that which is not ascertained. See **DAMAGES**, § 2; **JUDGMENT**, § 9; **LIQUIDATED**; **WRIT OF SUMMONS**.

UNMARRIED, (defined). 2 Barn. & Ald. 452; 21 Eng. L. & Eq. 504; 31 Id. 547; 10 Jur. 793.

— (in a will). L. R. 7 Ch. 7; 16 Ch. D. 716; L. R. 12 Eq. 105; 1 Jarm. Wills 457.

UNMARRIED, DYING, (in a will). 3 Ves. 452.

UNNECESSARY, (in a will). 3 Mad. 396.

UNNECESSARY DAMAGE, (in act authorizing commissioners to examine lands). 7 Johns. (N. Y.) Ch. 341.

UNNECESSARY NEGLECT OF DUTY, (in a statute). 11 Mass. 542.

Uno absurdo dato, infinita sequuntur (1 Co. 102): One absurdity being allowed, an infinity follows.

UNO FLATU.—At the same moment, and with the same intent.

UNOCCUPIED, (in a policy of insurance). 124 Mass. 126; 70 Mo. 610; 35 Am. Rep. 438; 13 Hun (N. Y.) 371, 373, 611, 620; 85 N. Y. 162; 45 N. Y. Super. 394.

— (in tax act). 2 Vr. (N. J.) 218; 13 Id. 113.

UNOCCUPIED BUILDINGS, (what are). 112 Mass. 422.

UNQUES.—Yet.

UNQUES PRIST.—See **UNCORE PRIST.**

UNREASONABLE DELAY, (by carriers). 54 Ill. 58.

UNREASONABLE SEARCHES, (defined). 53 Ill. 102.

UNSAFE, (in act concerning divorces). 1 Edw. (N. Y.) 292.

UNSEATED LANDS, (in tax act). 3 Pa. 110; 9 Serg. & R. (Pa.) 109; 10 Id. 254; 2 Waits (Pa.) 124.

UNSEAWORTHY.—See **SEAWORTHY**.

UNSHIPPED, UNLADEN OR PUT ON BOARD ANY OTHER SHIP, (in a bond). 11 Price 204.
 UNSOUND, (as applied to a horse). 9 Mees. & W. 668, 671.

UN SOUND MIND.—A person of unsound mind is an adult who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons, idiots and imbeciles. It is generally used (1) in cases where on an inquiry in lunacy the person would be found lunatic, and placed under the care of committees; and (2) in cases where a trustee has become of unsound mind, so as to necessitate an application to the court for his removal. Pope Lun. 18. See **INSANITY**; **LUNATIC**; **NON COMPOS MENTIS**.

UN SOUND MIND, (defined). 2 Park. (N. Y.) Cr. 215.

— (equivalent to "*non compos mentis*"). 2 Dana (Ky.) 103; 16 Barb. (N. Y.) 259; 3 Den. (N. Y.) 37, 41; 26 Wend. (N. Y.) 299.
 — (in a statute). 3 Edw. (N. Y.) 380; Shelf. Lun. 5.

UN SOUNDNESS, (of a horse). 4 Barn. & C. 445, 448; 2 Camp. 523, 524 n.; 4 Id. 231; 2 Chit. 425; 2 Esp. 673; Holt 630; 5 Moo. & P. 606; Moo. & S. 622; 1 Stark. 127; 2 Id. 81; 7 Taunt. 153.

UNTHRIFT.—A person of outrageous prodigality.

UNTIL, (when inclusive). 3 C. E. Gr. (N. J.) 315.

— (when is a word of exclusion). 5 East 244, 250.

— (in an affidavit). 2 Chit. 411.

— (in an assignment). 120 Mass. 94.

— (in act continuing corporation's charter). 17 N. Y. 502.

— (in an indictment). 1 Chit. Crim. L. 223, 224.

— (in an information). Stark. Cr. Pl. 65.

— (in a policy of insurance). 1 Marsh.

Ins. 262; 8 Taunt. 119.

— (in a will). 1 Barn. & C. 721, 746; Burr. 233; Cro. Jac. 259; 4 Mod. 141; 3 P. Wms. 177.

UNTIL SAFELY LANDED, (in a policy of insurance). 2 Bos. & P. 430, 436; 4 Id. 16, 19.

UNTIL SUCH TIME, (in a will). 3 Co. 19, 20.

UNTO, (in an indictment). Stark. Cr. Pl. 212.

— (in an information). 4 Com. Dig.

675, n. (m).

UNTO, LEADING FROM AND, (in an indictment). Leach C. C. 596.

UNTRULY SWORN, (in a declaration in libel case). Burr. 810.

Unumquodque dissolvitur eodem ligamine quo ligatur. Every obligation is dissolved by the same solemnity with which it is created. For the application of this maxim see Broom Max. (5 edit.) 884.

Unumquodque eodem modo quo colligatum est dissolvitur; quo constituitur, destruitur (2 Roll. 39): In the same manner in which anything is bound it is loosened; in the same manner in which it is constituted it is destroyed.

Unumquodque est id quod est principalis in ipso (Hob. 123): That which is the principal part of a thing is the thing itself.

Unumquodque principiorum est sibi met ipsi fides; et, perspicua vera non sunt probanda (Co Litt. 11): Every principle is its own evidence, and plain truths are not to be proved.

UNWORTHY OF REPAIR, (in an insurance policy). 2 Binn. (Pa.) 399.

UNWRITTEN LAW.—See **LEX NON SCRIPTA**.

UP THE CREEK, (in a patent). 10 Ohio 508.

UP THE SAME, (in a deed). 6 Cow. (N. Y.) 546.

UPLIFTED HAND.—When an oath is taken by raising the right hand toward heaven, instead of by laying it upon the Bible, it is said to be taken by the uplifted hand.

UPON, (in a covenant). 37 Iowa 503, 508.

— (in a statute). Wilberf. Stat. L. 139.

UPON CONDITION, (in a deed). 109 Mass. 1, 19; 8 Pick. (Mass.) 284, 288.

— (in a lease). 3 Wheel. Am. C. L. 191.

— (in a will). 1 Cro. 883, 919; Willes 153.

UPON HIM, (in tax act). 2 Serg. & R. (Pa.) 273.

UPON HIS ADMISSION, (in a statute). L. R. 2 C. P. 354.

UPON PAYMENT OF COSTS, (nonsuit set aside). 13 East 185.

UPON THE TRIAL, (in procedure act). L. R. 8 C. P. 470.

UPON WHICH, (equivalent to "after which," "whereupon"). 1 Wyom. T. 413, 419.

UPPER BENCH.—The style of the Queen's Bench during the protectorate of Cromwell.

URBAN SANITARY AUTHORITIES.—See **SANITARY AUTHORITIES**.

URBAN SERVITUDES.—Servitudes connected with houses, such as support, light, stillicide, &c.—*Bell Dict.*, *voc. SERVITUDE*.

URE means "operation" or "effect." To put in ure, therefore, is to put in operation. (See Stat. 13 Eliz. c. 2, § 1.) (Norman-French, from Latin, *opera*, a work. See **ENURE**.)

Us, (in a warrant of attorney). 3 Halst. (N. J.) 336; 1 Chit. 322.

USAGE is a uniformity of conduct on the part of two or more persons in respect to certain matters of common interest. Hence Coke says, in speaking of custom and prescription, "as for usage, that is the efficient cause or rather the life of both; for custom and prescription lose their being, if usage fail." (Co. Copyh. § 33. *See* CUSTOM; PRESCRIPTION.) As to usages of trade, *see* CUSTOM, §§ 8, 9.

USAGE, (defined). 12 Pet. (U. S.) 445; 3 Brewst. (Pa.) 452.

— (what constitutes). 15 Wend. (N. Y.) 482.

— (what is evidence of). 7 Mass. 36, 40; 22 Wend. (N. Y.) 215, 223.

— (not admissible to control a deed). 15 Wend. (N. Y.) 561.

— (is admissible to explain an ancient grant). 16 Johns. (N. Y.) 23.

— (cannot alter law). 7 Pet. (U. S.) 15; 10 Mass. 26, 27; 2 Johns. (N. Y.) 335; 12 Wend. (N. Y.) 566, 577; 4 Rawle (Pa.) 195; 3 Watts (Pa.) 178.

— (effect upon contracts). 10 Otto (U. S.) 195; 13 *Id.* 155; 9 Wheat. (U. S.) 592; 7 Allen (Mass.) 29; 5 Pick. (Mass.) 15; 1 Hall (N. Y.) 619; 7 Johns. (N. Y.) 385; 3 Wheel. Am. C. L. 394; 6 *Id.* 200.

USAGE, MERCANTILE, (as to bill of exchange). 87 Ill. 102.

USAGE OF TRADE, (defined). 1 Hall (N. Y.) 522.

— (what constitutes). Holt 412, 414.

— (what is not). 1 Car. & P. 392.

— (must be certain and uniform). 1 Car. & P. 59.

USAGE, REASONABLE, (what is). 1 Brod. & B. 224.

USANCE signifies the time in which all bills of exchange between one country and another were formerly payable. The time varied for different countries. Thus, a usance between England and Venice being three calendar months, a bill drawn on Venice at two usances and dated the 1st January, would fall due on the 1st July, subject to the allowance of days of grace. (Sm. Merc. Law 247; Byles Bills 78.) The practice of drawing bills at usances seems to be quite obsolete, the same result being attained by specifying the time for which the bill is to run, but the term "usance" is still employed to signify the period for which bills on a foreign country are by the practice of merchants almost invariably drawn; thus, the usance of bills on India is six months.

USE.—There are two words "use" in law, which, though spelled alike, are

etymologically and historically distinct. It is of importance to distinguish clearly between them.

§ 1. "**Use**"—"Employment."—In law, as in ordinary language, "use" denotes the act of employing a thing; thus, to cultivate land, to read a book, to inhabit a house, is to use those things.

§ 2. In the case of corporeal things, use is one of the modes of exercising ownership. (*See* OWNERSHIP; USE AND OCCUPATION.) In the case of incorporeal things, use is a mode of acquiring and retaining certain rights. (*See* ENJOYMENT.) Thus, if A. publicly makes use of his name or of some peculiar word or token (not being a trade-mark in the strict sense) in connection with his trade or occupation, he acquires the right to prevent other persons from using that name, word or token in such a way as to induce the public to believe that their business is carried on by A., and loses that right so soon as he discontinues the use. (Lud. & Jenk. 65, 66.) In the case of trade-marks falling within the English Trade-marks Registration Acts, registration is substituted for public user as a mode of acquiring title. *See* TRADE-MARK; *also*, PATENT RIGHT; PUBLIC JURIS

§ 3. "**Use**"—"Benefit."—In conveying, "use" literally means "benefit;" thus, in an ordinary assignment of chattels, the assignor transfers the property to the assignee for his "absolute use and benefit."* In the expressions "separate use," "superstitious use," and "charitable use" (*q. v.*), use has the same meaning. More often, however, "use" has a technical meaning which can only be explained historically.

§ 4. **Uses of land before the Statute of Uses**.—Before the year 1536, if one man (A.) conveyed land by feoffment (then almost the only mode of conveyance) to another (B.), with the intention, express or implied, that B. should not hold it for his own benefit, but for the benefit of a third person (C., or of A. himself; *see as to "resulting uses," infra*, § 10,) then B. was said to hold the land "to the use," *i. e.* for the benefit of C. In the courts of common law the feoffee to uses (B.) was looked upon as the owner of the land for almost all purposes, the seisin or legal estate being in him. In the Court of Chancery, on the other hand, he was looked upon as merely the nominal owner; he was bound to allow the *cestui que use* (C.) to have

*Shep. Touch. 501; Littleton (§ 383) mentions a case where an executor took the profits of his testator's lands to his own use, instead of

applying them to the use of the dead (*al use le mort*) by distributing the money for his soul.

the profits and benefit of the land and to deal with it as he pleased. C. was therefore the equitable or beneficial owner of the land. The "use" or beneficial ownership was treated like an estate, and descended on the intestacy of the *cestui que use* to his heir in the same way as the land would have done. A use was also devisable by will, although the land was not.

§ 5. The effect of a conveyance to uses was two-fold. First, it enabled interests in land to be created and transferred with a flexibility and secrecy unknown to the common law; this effect of uses still exists (*infra*, § 11 *et seq.*) Secondly, it enabled the owners of land to evade certain inconvenient incidents of common law ownership, especially escheats, forfeitures and other feudal obligations. After several attempts to prevent these effects by various acts of parliament, the statute known as the Statute of Uses was passed (27 Hen. VIII. c. 10). This statute in effect enacts that where any person is seised of any lands or other hereditaments to the use, confidence or trust of another, the latter shall be in lawful seisin, estate and possession of the lands for the same estate as he had in the use, and that the estate of the feoffee to uses shall be deemed to be in the *cestui que use*. The effect of this act was to convert uses into possession, or to make the *cestui que use* legal instead of equitable owner. The result is that if since the passing of this statute land is conveyed to A. and his heirs to the use of B. and his heirs, so that A. acquires the seisin of the land, then the statute is said to execute the use by turning it into a legal estate; the seisin passes out of A. and vests in B., who thus becomes legal owner of the land in fee-simple. (*See SCINTILLA JURIS.*) All estates which before the statute would have been good in equity and to which the statute applies are, since the statute, good estates in law.

§ 6. **Exceptions from statute.**—It will be observed that the statute only applies to cases where one person is seised of land or other hereditaments to the use of another. If, therefore, A. is possessed of a term of years or a chattel, or is in *quasi*-seisin of copyhold land (all of which are incapable of true seisin), to the use of B., the statute does not execute this use, and the legal estate remains in A.

§ 7. The statute also does not execute a second use, or a "use upon a use," nor does it execute active uses, or uses which impose some active duty on the grantee. If, therefore, land is conveyed to A. to the use of B. to the use of C. (which is a use upon a use), only the first use is executed; B. becomes seised of the land in accordance with the statute, but he holds it to the use of C. as if the statute had never been passed. Again, if land is conveyed to A. to the use (or upon trust) to pay over the rents and profits to B., this use is not

executed, and therefore the legal estate remains in A.

Hence uses are of two kinds, uses at common law, or those which remain unaffected by the statute, and uses which operate under the statute.

§ 8. **Uses at common law.**—Uses at common law include (1) all uses of leasehold and copyhold land and chattels, and (2) uses of freehold land or other hereditaments which are not executed by the statute because they are either "uses on uses" or active uses. A use at common law is now seldom created under that name, almost the only instance being where a copyhold tenant surrenders his land to the lord to the use of some other person; here the lord is merely a trustee or instrument for carrying the intended alienation into effect. (2 Davids. Conv. 201; Wats. Comp. Eq. 923.) When lands or chattels are conveyed to a person to be held by him for the benefit of another, the word "trust" is now always used. "Use" was employed in the sense of "trust" in Shakspear's time, Merchant of Venice, iv. 1, line 383. *See TRUST.*

§ 9. **Under the Statute.**—Uses which operate under the statute are those declared of land held by a freehold tenure for an estate of freehold, or of rents, services and most other hereditaments. Except those of which the enjoyment is inseparable from the possession: such as easements and *profits à prendre*. They are of the following kinds:

§ 10. **Express—Implied—Resulting.**—If A. conveys land to B. and his heirs to the use of C. for life, without more, then the land vests in C. for an estate for life, and the reversion in fee after C.'s estate results or returns to A., because it is not otherwise disposed of. Here the use to B. is an express use, and the use to A. is an implied or resulting use.

§ 11. **Executed—Executory.**—An executed use is one which takes effect immediately, as where land is conveyed to A. and his heirs to the use of B. and his heirs. An executory use is one which is to take effect at some future time. Executory uses are of four kinds.

§ 12. **Springing.**—A springing use is one which is limited so as to commence

in futuro, independently of any preceding estate; as where land is conveyed to A. and his heirs to the use of B. and his heirs, from to-morrow or on the death of C. Such a use does not take effect in derogation of any estate except that which results to the grantor or remains in him in the meantime.

§ 13. **Shifting.**—A shifting or secondary use is one which is limited so as to shift from one person to another on the happening of a given event; in other words, such a use takes effect in derogation of a preceding use; as where land is conveyed to A. and his heirs to the use of B. and his heirs, with a proviso that when C. returns from Rome the land shall be to the use of C. and his heirs. *See EXECUTORY INTERESTS; LIMITATION.* § 5.

§ 14. **Under powers.**—Uses may be limited or declared under powers. *See POWER,* § 7.

§ 15. **Future, or contingent.**—Future or contingent uses are those which are limited to take effect as remainders. Thus, if land is conveyed to A. and his heirs to the use of B. (a bachelor) for life, and after his death to his eldest son, this is a contingent use.

§ 16. At common law, a person could not make any conveyance to himself, so that if A. wished to convey property to himself and B. jointly, he was obliged to make a conveyance to some third person, C., and then C. made a reconveyance to A. and B. jointly. The Statute of Uses made it possible to evade this rule in the case of freehold estates in land, because if A., the owner of land, conveyed it to C. to the use of A. and B. and their heirs, the statute executed the use, and at once vested the land in A. and B. for a joint estate in fee-simple. The same method is available if A. wishes to convey land to B. in fee-simple, reserving to himself a life estate, or if A. wishes to convey land to his wife. (*Wms. Real Prop.* 191.) As the Statute of Uses does not apply to leaseholds or other chattels, it became necessary to pass an act enabling any person to assign personal property to himself jointly with another. (*Stat.* 22 and 23 *Vict. c. 35*, § 21; *Wms. Pers. Prop.* 477.) In conveyances executed, in England,

after the 31st of December, 1881, freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person, and may be similarly conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person. *Conveyancing Act, 1881,* § 50.

§ 17. **Easements, privileges, &c.**—Formerly, a thing could not be granted by way of use if the enjoyment of it was inseparable from the possession, such as annuities, ways, commons and authorities. (2 *Bl. Com.* 330.) Hence, where land was sold subject to an express reservation or exception of such rights, privileges or easements, the object had to be attained either by a regrant, or by a declaration that the land should remain to such uses as should give full effect to the reservation or exception, and (subject thereto) to the uses declared to vest the land in the purchaser. (*Dart Vend.* 506.) In conveyances made in England after December 31st, 1881, a limitation of freehold land to the use that a person may have an easement, right, liberty, or privilege over the land will operate to vest in possession in that person the easement, &c., so limited to him. *Conveyancing Act, 1881, s. 62.*

USE, (defined). *Kirby (Conn.)* 145; 20 *Ind.* 398.

— (what is). 50 *N. H.* 491.

— (stock pledged). 1 *Sweeny (N. Y.)* 643.

— (in a will). 22 *Pick. (Mass.)* 299, 304; 38 *Mich.* 402; 4 *Watts (Pa.)* 130.

USE AND BEHOOF, (in an agreement). *Dyer* 49 b.

USE AND BENEFIT, (in a will). 68 *Me.* 133.

USE AND IMPROVEMENT OF ALL MY REAL ESTATE, (in a will). 2 *Day (Conn.)* 338.

USE AND OCCUPANCY, (in a deed). 39 *Mich.* 419.

USE AND OCCUPATION.—A claim for use and occupation arises where a person has used and occupied the land of another with his permission but without any actual lease or agreement for a lease at a fixed rent. (*Woodf. Land. & T.* 499; *Chit. Cont.* 341.) It is sometimes said that the claim is one for damages (*Woodf.* 499), but this is hardly correct, for permissive occupation is not a wrongful act; the claim is really based on an implied or tacit con-

tract to pay for the use of the land. The action does not lay against a mere wrong-doer or trespasser. *Smith & S. L. & T.* 181.

USE AND OCCUPATION, CHANGE IN, (in an insurance policy). 59 Me. 582.

USE AND WEAR ONLY EXCEPTED, REASONABLE, (in a covenant). 2 Campb. 449.

USE, FOR HER, (a devise to a wife). 2 Day (Conn.) 28.

USE, FOR THE, (a bequest). 5 Wheel. Am. C. L. 556.

USE, FREE, (of lands, a devise of, passes the interest in them). 1 East 37.

USE OF, (in a deed). 107 Mass. 290, 324.

USE OF PERSONAL PROPERTY, (in a will). 1 Stockt. (N. J.) 260.

USE OF SAID SEMINARY, FOR THE, (in a conveyance). 20 Ind. 398.

USE OF THE NEWLY-INTENDED ROAD, THE FREE, (in a covenant). 5 Taunt. 548.

USE OF THE TIMBER, (grant of). 11 Rich. (S. C.) 621.

USE, PAY TO B. OR HIS ORDER FOR MY, (indorsed on a bill of exchange). 8 Barn. & C. 622; 5 Bing. 525.

USE PORTS, (in an insurance policy). 48 Barb. (N. Y.) 469; 48 N. Y. 624; 35 Super. (N. Y.) 247.

USE, PUBLIC, (in the constitution). 18 Wend. (N. Y.) 60.

USE, SEPARATE, (of a married woman, when a devise is for). 5 Ves. 540.

USED, (not synonymous with "belonging to"). 1 Chit. Gen. Pr. 214.

—— (in an indictment). 7 Allen (Mass.) 304, 305.

USED AND ENJOYED, (in a lease). 5 Barn. & Ald. 830.

USED, HERETOFORE, (in a lease). 2 Barn. & C. 96.

USED, OCCUPIED AND ENJOYED, (in surrender of lease). L. R. 3 Ex. 161.

USED OR ENJOYED, (in a deed). 1 Chit. Gen. Pr. 157.

—— (in a grant). 1 Dowl. & Ry. 506, 508.

USEFUL.—This word as used in the patent laws requiring an invention to be "useful" means such an invention as may be applied to some beneficial use, in contradistinction to one which is injurious to the morals, health, or good order of society. See the cases referred to below.

USEFUL, (in patent law). 2 Blatchf. (U. S.) 279, 290; 1 Mas. (U. S.) 182, 186, 302; 4 McLean (U. S.) 565; 5 Id. 44; 4 Wash. (U. S.) 9; 14 Pick. (Mass.) 217; Fess. Pat. 59.

USEFUL CLAUSES, (in an agreement). 1 Meriv. 459, 467, 473.

USEFUL INVENTION, (what constitutes). Baldw. (U. S.) 303.

USER is the same thing as "use" in the ordinary sense of the word. See **USE**, § 1.

USER DE ACTION.—The pursuing or bringing an action in the proper county, &c.—*Broke* 64.

USES AND PURPOSES, (in the lateral railroad act). 3 Pittsb. (Pa.) 504.

USES TO BAR DOWER.—When a conveyance of land is made, in England, to a person who was married to his present wife on or before the first of January, 1834, and he wishes to prevent her right to dower from attaching to the land, it is conveyed to the following uses: (1) To such uses as the purchaser shall appoint; (2) in default of appointment, to the use of him and his assigns during his life; (3) in the event of the determination of that estate, by forfeiture or otherwise, in his lifetime, to the use of a trustee during the life of the purchaser, in trust for him; with (4) an ultimate limitation to his heirs and assigns forever. By this means the purchaser has a full power of alienation, without having a greater estate in possession than an estate for life, to which the wife's dower does not attach, and the intermediate estate of the trustee prevents the remainder in fee-simple from vesting in the purchaser in possession (and so becoming liable to dower) by any accidental merger of the life estate. See *Wms. Real Prop.* 305, and app. (D). See, also, **DOWER**.

USHER—A door-keeper; an officer who keeps silence in a court. The office of usher of the Court of Chancery is abolished by 15 and 16 Vict. c. 87, § 27.

USHER OF THE BLACK ROD.—The gentleman usher of the black rod is an officer of the House of Lords appointed by letters-patent from the crown. His duties are, by himself or deputy, to desire the attendance of the Commons in the House of Peers when the royal assent is given to bills, either by the queen in person or by commission, to execute orders for the commitment of persons guilty of breach of privilege, and also to assist in the introduction of peers when they take the oaths and their seats. (*May Parl. L.*)—*Brown*.

USQUE AD FILUM AQUÆ, or VIÆ.—Even to the middle of the stream or road.

USUAL, (in a statute). 1 Nott & M. (S. C.) 89, 90.

USUAL AND COMMON COVENANTS, (in an agreement). 7 Barn. & C. 627; Com. L. & T. 113.

USUAL AND CUSTOMARY, (defined). 77 Pa. St. 286.

USUAL AND PROPER COVENANTS, (what are). 2 Sch. & L. 556.

—— (in an agreement to lease). 15 Ves. 265, 271, 528.

USUAL AND REASONABLE COVENANTS, WITH ALL, (in an agreement). 3 Anstr. 700; 1 Chit. Gen. Pr. 300.

USUAL BUSINESS HOURS, (within which carrier may make delivery). 18 Minn. 133.

USUAL COURSE OF BUSINESS, (in distress act). 5 Blackf. (Ind.) 489.

USUAL COVENANTS, (what are). 1 Esp. 8.

— (in an agreement). 1 Man. & Ry. 644; 3 Taunt. 73.

— (in contract for deed with). 2 C. E. Gr. (N. J.) 216.

— (in a lease). 7 Ch. D. 555; 2 Swanst. 249; 1 T. R. 705.

USUAL OR ORDINARY HIGH-WATER MARK, (defined). 18 Cal. 11.

USUAL PLACE OF ABODE, (in a statute). 12 W. Va. 750.

USUAL PLACE OF BUSINESS, (in a statute). 111 Mass. 320.

USUAL PLACE OF RELIGIOUS WORSHIP, (in statute exempting from tolls). L. R. 6 Q. B. 34.

USUAL POWERS AND COVENANTS, (in articles of marriage settlement). Jac. 158.

USUAL POWERS AND PROVISOS, (in articles of marriage settlement). 2 Ves. & B. 311.

USUAL PROJECTIONS, (in a deed). 101 Mass. 512, 530.

USUAL STOPPING-PLACE, (in a statute). 43 Ill. 364.

USUAL TERMS.—A phrase in the common law practice, which meant pleading issuably, rejoining gratis, and taking short notice of trial. When a defendant obtained further time to plead, these were the terms usually imposed.

USUAL TERMS, (in a rule of court). 2 Chit. 292.

— (in a submission to arbitration). 2 Chit. Gen. Pr. 86.

USUAL WAY, (in an agreement by creditors of a bankrupt). 4 Bing. 53.

USUALLY RESIDING WITH, (in a statute). 10 Barn. & C. 66, 69.

USUALLY SOLD, (in a statute). L. R. 4 Q. B. 559, 565.

USUCAPIO.—A term of Roman law, used to denote a mode of acquisition by the civil—i. e. old strict law. It is, however, sometimes used as interchangeable with *longi temporis possessio*; but, strictly speaking, *longi temporis possessio* was confined to immovables (i. e. real property), and was always adverse, while *usucapio* extended both to immovable and movable property, and might be either adverse or consistent. It corresponds very nearly to the English term prescription or limitation, which, by the Stats. 3 and 4 Will. IV. c. 27, and 37 and 38 Vict. c. 57 (as to corporeal hereditaments), and 2 and 3 Will. IV. c. 71 (as to incorporeal hereditaments), confers a positive (although merely possessory) title on the holder. But the prescription of Roman law differed from that of the English law, not only in its times (which are of less importance), but also in this great and peculiar feature, that no *mala fide* possessor (i. e. person in possession knowingly of the property of another) could by however long a period acquire title by possession merely, the two never-failing requisites not only to *usucapio*, but also to *longi temporis possessio*, being *justa causa* (i. e. title) and *bona fides* (i. e. ignorance). In Roman law, re-acquisition by *usucapio* was called "*usureceptio*." See ADVERSE POSSESSION.

Usucapio constituta est ut aliquis litium finis esset: The object of *usucapio* (title by quiet possession) is to put an end to litigation.

USUFRUCT.—The right of reaping the fruits (*fructus*) of things belonging to others, without destroying or wasting the subject over which such right extends.

USUFRUCTUARY.—He who enjoys the *usufruct*.

USUFRUIT.—In the French law, the same as the *usufruct* of the English and Roman law.

Usura est commodum certum quod propter usum rei (vel æris) mutuata recipitur; sed, secundario sperare de aliqua retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum (5 Co. 70): Usury is a certain benefit which is received for the use of a thing (or of money) lent; but, secondly, to hope for a certain return, at the option of the party who borrowed, this is not vicious. See USURY.

USURA MARITIMA.—Interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and is not affected by the usury laws.

USURPATION OF ADVOWSON.—An injury which consists in the absolute ouster or dispossession of the patron, and which happens when a stranger who has no right presents a clerk, and the latter is thereupon admitted and instituted. See DISTURBANCE; SPOILIATION.

USURPATION OF FRANCHISES, or OFFICES.—The unjustly claiming or usurping any office, franchise, or liberty. See DISTURBANCE; QUO WARRANTO.

USURPED POWER, (in an insurance policy). 21 Wend. (N. Y.) 367.

USURY.—LATIN: *usura*, a using or enjoyment, from *uti*, to use, *usura*, interest paid for the use of money. The division into *usura conventionalis* and *usura punitoria* is identical with that of interest in English law, into interest payable by contract and interest payable as damages. Thibaut Pand § 192.

§ 1. Originally usury had the same meaning as interest has at the present day, viz., a periodical payment in consideration of a loan. "Purchases, estates and contracts may be avoided . . . by certain acts of parliament against usury above ten in the hundred." (Co. Litt. 3b. This rate was varied from time to time by subsequent statutes.) Many attempts were made to evade these statutes by making the interest payable in the form of rents, annuities, &c., and in such cases the question was whether the stipulated payment was *bona fide* a rent or annuity, &c., or whether it

was usury, and the contract a usurious one within the statute. 5 Co. 69 *et seq.*

§ 2. Hence "usury" acquired the sense of interest above the rate allowed by those acts of parliament, and the acts making all such usurious contracts void became known as the usury laws. They were repealed by Stat. 17 and 18 Vict. c. 90. Consult the usury laws of the various States. See INTEREST, § 13 *et seq.*

USURY, (defined). 5 Hill (N. Y.) 523, 528; 2 Johns. (N. Y.) Cas. 355, 364; 3 *Id.* 206; 2 Watts (Pa.) 264; 1 Ves. 531; 4 Bl. Com. 158; 1 Fonb. Eq. 233-256.

— (what constitutes). 1 Black. (U. S.) 115; 2 Dall. (U. S.) 92; 9 Pet. (U. S.) 378, 418; 11 Conn. 437; 5 Day (Conn.) 100, 106; 4 Ind. 283; 3 Gill & J. (Md.) 482; 5 Mass. 53; 3 Gr. (N. J.) 255; 2 Halst. (N. J.) 130; 3 *Id.* 233; 2 Harr. (N. J.) 192; 32 Barb. (N. Y.) 557; 41 *Id.* 359; 2 Cow. (N. Y.) 705, 712; 84 N. Y. 627; 2 Paige (N. Y.) 267; 10 Superior (N. Y.) 506; 5 Serg. & R. (Pa.) 51; 2 Munf. (Va.) 424; 8 Wheel. Am. C. L. 250; 3 Wils. 395.

— (what is not). 3 Otto (U. S.) 344; 2 Conn. 341; 10 Me. 315; 3 Gill & J. (Md.) 123; 10 Mass. 121; 3 Cow. (N. Y.) 284; 1 Hill (N. Y.) 227; 85 N. Y. 162; 87 *Id.* 50; 5 Paige (N. Y.) 98; 1 Wend. (N. Y.) 521; 17 *Id.* 280; 21 *Id.* 103, 285; 24 *Id.* 165; 3 Ohio 18; 4 Hen. & M. (Va.) 490; 2 Munf. (Va.) 36; 6 *Id.* 430, 433; 1 Atk. 351; 1 Holt 256.

— (distinguished from a "penalty"). 11 Bush (Ky.) 180.

USUS.—In the Roman law, a precarious enjoyment of land, corresponding with the right of *habitatio* of houses, and being closely analogous to the tenancy at sufferance or at will of English law. The *usuarius* (*i. e.* tenant by *usus*) could only hold on, so long as the owner found him convenient, and had to go so soon as ever he was in the owner's way (*molestus*). The *usuarius* could not have a friend to share the produce—it was scarcely permitted to him (Justinian says) to have even his wife with him on the land; and he could not let or sell, the right being strictly personal to himself.—*Brown*.

Usus est dominium fiduciarium (Bac. Uses): Use is a fiduciary dominion.

Usus et status sive possessio potius differunt secundum rationem fori, quam secundum rationem rei (Bac. Uses): Use and estate, or possession, differ more in the rule of the court than in the rule of the matter.

Ut poena ad paucos, metus ad omnes perveniat (4 Inst. 6): So that punishment may fall on few, the fear of it on all.

Ut summæ potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit (3 Inst. 236): As the highest power of a king is to be able to

do all he wishes, so the highest greatness of him is to wish all he is able to do.

UTAS.—The eighth day following any term or feast.—*Cowell*.

UTENSILS, (in a declaration in trover). 1 Cro. 817.

— (in a will). Dyer 59b; 1 Russ. 427.

UTERINE BROTHER.—A brother born of the same mother; *frater consanguineus*, is the son of the same father.

UTERO-GESTATION.—Pregnancy.

UTFANGETHEF.—See OUTFANGTHEF.

UTI POSSIDETIS.—As you possess. A phrase inserted in treaties of peace permitting each belligerent party to keep what he has acquired during the war.

Utile per inutile non vitiatur (Dyer 392): The useful is not vitiated by the useless.

Utlagatus est quasi extra legem positus: caput gerit lupinum (7 Co. 14): An outlaw is, as it were, put out of the protection of the law: he bears the head of a wolf.

Utlagatus pro contumacia et fuga, non propter hoc convictus est de facto principali (Fleta): One who is outlawed for contumacy and flight, is not on that account convicted of the principal fact.

UTLAGHE.—An outlaw.

UTLARY.—NORMAN-FRENCH: *utlagarie*, (Litt. § 197); from Anglo-Saxon, *utlaga*.

Outlawry. Co. Litt. 128a. See OUTLAW.

UTLAWRY.—Outlawry.

UTLESSE.—An escape of a felon out of prison.

UTMOST CARE AND DILIGENCE, (construed). 21 Md. 275.

UTTER.—

§ 1. In criminal law, to utter a forged document or seal, &c., or counterfeit coin, is to pass or attempt to pass it off as genuine. In the case of a forged document it is not clear whether it is necessary that the offender should actually part with the document, or whether a mere showing of it can be called an uttering. *R. v. Ion*, 2 Den. C. C. 475; 2 Russ. Cr. 721, and *Mr. Greaves' note* (1).

§ 2. Uttering a forged document (knowing it to be forged) is in general the same offense as that of forging the same docu-

ment. (*See* FORGERY.) Uttering counterfeit money (knowing it to be counterfeit) is a misdemeanor. Steph. Cr. Dig. 295.

UTTER, (of a forged instrument). 2 Binn. (Pa.) 339.

UTTER, ATTEMPT TO, (what constitutes). 1 Brev. (S. C.) 482.

UTTER BARRISTERS.—*See* BARRISTER.

UTTER LOSS, (what is not). 1 Mau. & Sel. 30.

—— (in a bottomry and respondentia bond). 6 Otto (U. S.) 645; 8 Serg. & R. (Pa.) 138.

UTTERED AND PUT OFF, (in an indictment). 2 Den. C. C. 76; 1 Templ. & M. 409.

UTTERING, (what constitutes). 2 Cranch (U. S.) C. C. 243; 1 Abb. (U. S.) 135; 1 Baldw. (U. S.) 366; 25 Mich. 388; 27 *Id.* 386; 3 Abb.

(N. Y.) App. Dec. 439; 21 Wend. (N. Y.) 509, 1 Den. C. C. 59; 2 *Id.* 477; 4 Taunt. 300. — (what is not). 4 Cranch (U. S.) C. C. 309; 2 Car. & K. 352.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir (3 Inst. 108): A woman married to a thief shall not be bound by his actions, for she cannot accuse her husband, nor discover the robbery or felony, since she has no power over herself, but her husband has power over her.

Uxor non est sui juris, sed sub potestate viri, cui in vita contradicere non potest: A wife has no power of her own, but is under the government of her husband, whom in his life-time she cannot contradict. *See* 2 Steph. Com. (7 edit.) 272.

V.

V. G.—*Verbi gratia*, for the sake of example.

VACANCIES, (in State constitution). 2 Wend. (N. Y.) 273.

VACANCY.—A place which is empty. The term is principally applied to offices having no incumbent.

VACANCY, (in constitution of California). 10 Cal. 38.

—— (in act respecting town officers). 18 Wend. (N. Y.) 518.

—— (in patent law). 1 Woodb. & M. (U. S.) 389.

—— (in office). 49 Wis. 328.

VACANT, (defined). 5 Nev. 111, 129.

—— (in constitution of Missouri). 56 Mo. 17, 20.

—— (in an insurance policy). 44 N. Y. Superior 444, 452.

—— (office). 7 Ind. 326.

VACANT AND UNOCCUPIED, (in an insurance policy). 72 N. Y. 117; 81 *Id.* 184, 188; 12 N. Y. Superior 444.

VACANT, BECAME, (in a statute). 3 Car. & P. 399.

VACANT GLEBE, (what is not). 2 Munf. (Va.) 513.

VACANT OR UNOCCUPIED, (in a policy of insurance). 122 Mass. 298; 24 Hun (N. Y.) 58.

VACANT POSSESSION.—*See* POSSESSION, § 1; SERVICE, § 10.

VACANT SUCCESSION.—An inheritance, the heir to which is unknown.

VACANTIA BONA.—In the civil law, things without an owner; the goods of one dying without successors.

VACARIUS, commonly called "Magister Vacarius," was a Lombard by birth. He gave lectures on Roman law in Oxford from 1149 to 1170. He wrote *Liber ex universo enucleato jure exceptus*. Holtz. Encycl.

VACATE is to discharge or deprive of legal effect. The term is chiefly applied to judgments, recognizances and *lites pendentes* (*q. v.*), which are canceled or vacated when they are irregularly obtained or have served their purpose.

VACATED, (in a policy of insurance). 56 N. H. 401; 67 N. Y. 260; 23 Am. Rep. 111.

VACATION.—

§ 1. Judicial business.—The vacations are the periods of the year during which the courts are closed for ordinary business. There are, however, certain kinds of business which must be transacted, in England, during vacation, (*e. g.* applications for injunctions, for extension of time, &c.) and for this purpose, one or two vacation judges and a staff of officials attend in court periodically during the vacations.

§ 2. The vacations in England are four, namely, the Easter Vacation, from Good Friday to Easter Tuesday; the Whitsun Vacation, from the Saturday before Whit Sunday to the Tuesday after; the Long Vacation, from the 10th August to the 24th October; and the Christmas Vacation, from the 24th December to the 6th January. Rules of Court, lxi. 2 *et seq.*; Sm. Ac. 22. *See* SITTINGS; TERM, § 8.

§ 3. **Ecclesiastical law.**—Vacation also signifies, in ecclesiastical law, that a church or benefice is vacant; *e. g.* on the death or resignation of the incumbent, until his successor is appointed. 2 Inst. 359; Phillim. Ecc. L. 495. See **PLENARY**; **SEQUESTRATION**, § 5.

VACATUR.—It is vacated. The name of a rule or order by which a proceeding is vacated.

VACATURA.—An avoidance of an ecclesiastical benefice.—*Cowell*.

VACCARIA.—A dairy. Co. Litt. 5b.

VACUA POSSESSIO.—The vacant possession, *i. e.* free and unburdened possession, which (*e. g.*) a vendor had and has to give to a purchaser of lands.

VADES.—In the civil law, pledges; sureties; bail; security for the appearance of a defendant or accused person in court.—*Calv. Lex*.

VADIARE DUELLUM.—To wage combat. Where two contending parties, on a challenge, do give and take a mutual pledge of fighting.—*Cowell*.

VADIMONIUM.—In the Roman law, the personal bail of English law.

VADIUM.—In the civil law, a pledge or surety.

VADIUM MORTUUM.—A mortgage, or dead-pledge.

VADIUM PONERE.—To take bail or pledges for a defendant's appearance.

VADIUM VIVUM.—A vifage or living pledge.

VADLET.—The king's eldest son—hence the valet or knave follows the king and queen in a pack of cards. Barr. Stat. 344.

VADUM.—In old records, a ford, or wading place.—*Cowell*.

VAGABONDS—VAGRANCY.—The provisions of the English law with respect to vagrancy are directed against (1) "idle and disorderly persons," *e. g.* persons who refuse to work, unlicensed peddlers, beggars, &c.; (2) "rogues and vagabonds," *e. g.* fortune-tellers, persons lodging in deserted buildings or the open air without visible means of subsistence, &c.; (3) "incorrigible rogues," *e. g.* persons twice convicted of being rogues and vagabonds, persons who escape from imprisonment as rogues and vagabonds, &c. These offenses are punishable with imprisonment, and (in some cases) with whipping. (Stat. 5 Geo. IV. c. 83; Steph. Cr. Dig. 117; 4

Steph. Ccm. 287, where the other statutes are mentioned.) Similar statutory provisions prevail in most if not all of the States.

VAGRANCY, (defined and distinguished from "disorderly conduct" and "breaches of the peace"). 41 Mich. 299.

VAGRANT, (who is not). Browne (Pa.) 275. — (common soldier cannot be). 1 Wils 331.

— (child of two years old cannot be) Str. 631.

VAGRANT, YOU ARE A, (will sustain an action of slander). 4 Yeates (Pa.) 423.

VALEAT QUANTUM.—Let it have its weight, small or great.

VALEC, VALECT, or VADELET.—A young gentleman; also a servitor or gentleman of the chamber.—*Cowell*.

VALENTIA.—The value or price of anything.

VALESHERIA.—The proving by the kindred of the slain, one on the father's side, and another on that of the mother, that a man was a Welshman.

VALID.—Of binding force. A deed, will, or other instrument, which has received all the formalities required by law, is said to be valid.

VALID AND EFFECTUAL, (applied to a sale, in a statute). 3 Campb. 284.

VALID TO ALL INTENTS AND PURPOSES, (have as large an import as to conclude all persons whatever). 2 Mass. 470.

VALIDITY, (equivalent to "certainty"). 1 Hen. & M. (Va.) 84.

VALOR BENEFICIORUM.—The value of every ecclesiastical benefice and preferment, according to which the first fruits and tenths are collected and paid. It is commonly called the "king's books," by which the clergy are at present rated. 2 Steph. Com. (7 edit.) 533.

VALOR MARITAGII.—During the prevalence of the feudal tenures, the guardian was at liberty to exercise over his infant ward the right of marriage (*maritagium*), *i. e.* he had the power of tendering him or her a suitable match, without disparagement or inequality, and if the ward refused the offered match, then he or she forfeited the value of the marriage (*valorem maritagi*) to the guardian, *i. e.* so much as a jury would assess, or any one would *bond fide* give, to the guardian for such an alliance; and if the infant married without the guardian's consent, he or she forfeited double the like value, *duplicem valorem maritagi*. (Litt. 110.) —*Brown*.

VALUABLE ARTICLE, (in a statute). 33 Ind. 402; 5 Am. Rep. 224.

VALUABLE CONSIDERATION.

—See CONSIDERATION, § 7; VALUE.

VALUABLE CONSIDERATION, (defined). Baldw. (U. S.) 358.

— (what is). 9 Pet. (U. S.) 204; 9 Mass. 161, 177; 8 Cow. (N. Y.) 454.

— (what is not). 2 Atk. 152.

— (distinguished from "good consideration"). 2 Bl. Com. 297.

VALUABLE, LESS, (in a statute, when means "less productive"). 9 East 169.

VALUABLE SECURITY, (in a statute). L. R. 8 Ex. 37; 2 Q. B. D. 157, 163.

VALUABLE THING, (distinguished from "valuable security"). 6 Vr. (N. J.) 453.

VALUATION.—As to valuation for rates and taxes, see ASSESSMENT, § 2; RATE.

As to valuation of securities in administrative proceedings, see CREDITOR, §§ 3, 4.

VALUE is often used as an abbreviation for "valuable consideration," especially in the phrases "purchaser for value," "holder for value," &c. The question whether a person acting in good faith has given value for property is often of importance when the person from whom he acquired it had not a perfect title as against some other person. Thus, if a trustee fraudulently sells the trust property to a "bonâ fide purchaser for value," *i. e.* to a person who had no reason to believe that it was affected with a trust, and gave a fair price for it, the *cestui que trust* has no claim against the purchaser. Lew. Trusts 707 *et seq.* See, also, *In re Gomersall*, 1 Ch. D. 137. See BONA FIDES; CONSIDERATION; NEGOTIABLE.

VALUE, (defined). Hob. 65.

— (how alleged in an indictment). Stark. Cr. Pl. 220.

— (in act condemning land for railroad). 21 Minn. 322.

— (in Ohio code). 25 Ohio St. 433.

VALUE, FULL, (what is). 1 H. Bl. 164.

VALUE OF EIGHT POUNDS, OF THE YEARLY, (in a statute). 1 Cro. 853.

VALUE OF LAND TAKEN, (in a statute). 21 Minn. 322.

VALUE OF TENEMENTS, (in a statute). L. R. 4 Q. B. 4.

VALUE RECEIVED.—A phrase generally inserted in bills of exchange and promissory notes, but which is not necessary, since value is implied in every bill, as much as if expressed *in totidem verbis*. *White v. Ledwick*, 4 Doug. 247; Byles Bills (11 edit.) 85.

VALUE RECEIVED, (defined). 32 Iowa 265.

— (in an agreement). 3 Cal. (N. Y.) 286; 1 Cramp. & J. 162.

— (in a bill of exchange). 2 Dev. (N. C.) 8; 1 Barn. & C. 674; 3 Mau. & Sel. 351; 5 Id. 65.

— (not necessary in a bill of exchange). Ld. Raym. 1481; 8 Mod. 266; 2 Show. 496; 3 Wils. 212.

— (indorsed on a bill of exchange). 5 Mass. 544.

— (in contract of guaranty). 1 Hill (N. Y.) 501; 23 N. Y. 495; 19 Wend. (N. Y.) 537; 4 Wis. 190.

— (in contract for the sale of lands). 7 Wis. 413.

— (in a deed). 3 Johns. (N. Y.) 484; 18 Id. 60, 78.

— (in a promissory note). 8 Conn. 286, 289; 5 Pick. (Mass.) 391; 11 Gray (Mass.) 173; 5 Duer (N. Y.) 468; 1 Hall (N. Y.) 201, 209; 8 Johns. (N. Y.) 29; 4 Wend. (N. Y.) 575; Dudd. (S. C.) 30; 2 Nott & M. (S. C.) 555; 7 Humph. (Tenn.) 536, 573; 5 Barn. & C. 360, 501; 7 Dowl. & Ry. 140.

— (in a note to pay in neat cattle). 7 Johns. (N. Y.) 321.

— (in a sealed promissory note). 1 Blackf. (Ind.) 41.

— (in an assignment of a promissory note). 1 Mass. 117, 125.

— (immaterial in declaring on a promissory note). 3 Cranch (U. S.) 193, 198.

— (indorsed on an interest warrant). 41 Barb. (N. Y.) 9.

VALUE RECEIVED, WITH INTEREST, (in a promissory note). 1 Tyrw. 21.

VALUE THEREIN ACKNOWLEDGED, (in a declaration). 3 McCord (S. C.) 195.

VALUE, TRUE, (in duty act). 11 Wheat. (U. S.) 419, 421.

VALUE, YEARLY, (in a statute). 10 East 44.

VALUED, (in a will). 20 Wend. (N. Y.) 437.

VALUED POLICY.—See POLICY OF INSURANCE, § 2.

VALUED POLICY, (what is). 3 Binn. (Pa.) 208.

— (distinguished from "open policy"). 1 Duer Ins. 97.

VALUER.—A person whose business is to appraise, or set a value upon property.

VALVASORS, or VIDAMES.—An obsolete title of dignity next to a peer. 2 Inst. 667; 2 Steph. Com. (7 edit.) 612.

Vana est illa potentia quæ nunquam venit in actum (2 Co. 51): Vain is that power which never comes into play.

VANG.—To stand for one at the font.—Blount.

VANGEROW.—Karl Adolf von Vangerow was born June 5th, 1808, near Marburg, where he became professor of jurisprudence in 1833. In 1840 he succeeded

Phibaut at Heidelberg, where he died October 11th, 1870. His principal work is the *Lehrbuch der Pandecten*. He also wrote treatises on the *Latini Juniani* and the *Lex Voconia*. Holtz. Encycl.

Vani timores sunt æstimandi, qui non cadunt in constantem virum (7 Co. 27): Those fears are to be counted vain which affect not a resolute man.

VANTARIUS.—A precursor.—*Cowell*.

VARIANCE, in procedure, is a discrepancy between a material statement in a pleading and the evidence adduced in support of it at the trial. As to the old law on the subject, see *Sm. Ac.* (11 edit.) 82, 159.

VARIANCE, (defined). 27 Conn. 638; 30 *Id.* 57.

— (between writ and declaration, how taken advantage of). 11 Wheat. (U. S.) 302; 4 Halst. (N. J.) 284; 5 *Id.* 274; 1 Hill (N. Y.) 204; 12 Johns. (N. Y.) 430.

— (between the declaration and proof). 2 Hill (N. Y.) 126; 13 Johns. (N. Y.) 486; 12 Wend. (N. Y.) 566.

— (between contract and proof, fatal). 6 Halst. (N. J.) 293; South. (N. J.) 223.

— (between the copy of a paper served and the original). 2 Hill (N. Y.) 413.

— (doctrine of applies to torts). 7 Halst. (N. J.) 326, 331.

VARIANCE, MATTERS IN, (submission of, to arbitration). 4 Rawle (Pa.) 299.

VASSAL.—One who holds of a superior lord; a subject; a dependent; a tenant or feudatory. 1 Steph. Com. (7 edit.) 174.

VASSAL, (defined). 2 Bl. Com. 53.

VASSALAGE.—The state of a vassal; tenure at will; slavery.

VASSELERIA.—The tenure or holding of a vassal.—*Cowell*.

VASTO.—See *DE VASTO*.

VASTUM.—A waste or common lying open to the cattle of all tenants who have a right of commoning.—*Cowell*.

VASTUM FORESTÆ VEL BOSCI.—That part of a forest or wood wherein the trees and underwood were so destroyed that it lay, in a manner, waste and barren.—*Par. Antiq.* 351.

VATTEL.—Emerich von Vattel was born at Courret, in Switzerland, in 1714 and died in 1767. He wrote *Droit de Gens* and *Questions de Droit naturel*. Holtz. Encycl.

VAUDERIE.—Sorcery; witchcraft; the profession of the Vaudois. 3 Hall. Mid. Ages c. ix., pt. 2, p. 386 n.

VAVASORY.—The lands that a vavasour held.—*Cowell*.

VAVASOUR.—One who, himself holding of a superior lord, has others holding under him; a person *magnæ dignitatis*, so called *tantum Vas sortitum ad valetudinem*.—*Camd.* See Reeves Hist. Eng. Law c. v., p. 26; *Cowell*.

VEAL-MONEY.—The tenants of the manor of Bradford, in the county of Wilts, paid a yearly rent by this name to their lord, in lieu of veal paid formerly in kind.—*Bract*.

VECTIGAL JUDICIARIUM.—Fines paid to the crown to defray the expenses of maintaining courts of justice. 3 Salk. 33.

Vectigal, origine ipsa, jus Cæsarum et regum patrimoniale est (Dav. 12): Tribute, in its origin, is the patrimonial right of emperors and kings.

VEGETABLE PRODUCTION, (what is not). 1 Moo. & M. 341.

VEGETABLES, (in a statute). 2 Chit. Gen. Pr. 136 n.

VEHICLE, (a ferry-boat is not). 25 Ind. 283.

VEIN OR LODGE, (defined, as applied to mining). 4 Sawy. (U. S.) 302.

VEJOURS.—Persons sent by a court to take a view of any place in question, for the better decision of the right thereto; also, persons appointed to view the result of an offense.—*O. N. B.* 112.

VELABRUM.—In old English law, a toll-booth. Cro. Jac. 122.

VELTRARIA.—The office of dog-leader, or coursier.—*Cowell*.

VELTRARIUS.—One who leads greyhounds.—*Blount*.

VENARIA.—Beasts caught in the woods by hunting.

VENATIO.—Hunting.—*Cowell*.

VEND, (defined). 4 Ad. & E. 251, 253, 255.

VENDEE.—One to whom anything is sold.

VENDER, or VENDOR.—A seller.

VENDITION.—Sale; the act of selling.

VENDITIONI EXPONAS.—

§ 1. In aid of *fi. fa.*—When a writ of *fi. fa.* has been issued and the sheriff returns that he has taken the goods, but that they remain in his hands for want of

buyers, a writ of *venditioni exponas* ("that you expose for sale") may be sued out to compel a sale of the goods for any price they will fetch. Chit. Gen. Pr. 678; Sm. Ac. 197. See *DISTRINGAS*, § 3.

§ 2. *Extent*.—When a writ of extent in chief or in aid has been returned and no one appears to claim the goods, &c., mentioned in the inquisition, a *renditioni exponas* issues directing the sheriff to sell them. Tidd. Pr. 1068.

VENDITOR.—A seller; a vendor. Inst. 3, 24; Bract. 41.

VENDITOR REGIS.—The king's salesman, who exposed to sale those goods and chattels which were seized or distrained to answer any debt due to the king.—*Cowell*.

VENDITRIX.—A female vendor. Cod. 4, 51, 3.

VENDOR, (distinguished from "grantor"). 53 Miss. 683, 685.

VENDOR'S LIEN.—An unpaid vendor of lands is entitled to a lien thereon for the purchase money (or the proportion thereof) remaining unpaid after execution of the conveyance and possession delivered; and such a lien is equivalent in value to an equitable mortgage, being a real right and not merely a personal one. The lien is not lost by taking a collateral security, *e. g.* a bond; but if the bond was substitutive of, and not cumulative with, the lien, then the lien is gone. The lien when it exists and is not lost, waived, or abandoned, holds good against the purchaser himself, and his heirs, and all persons taking under him or them as volunteers; also, against subsequent purchasers for valuable consideration who bought with notice of the purchase money remaining unpaid; also, against the assignees or trustees of a bankrupt, although they may have had no notice of it; and if the legal estate is outstanding, then also against all subsequent purchasers and mortgagees of the land. On the other hand, the lien will not prevail against a *bonâ fide* purchaser for valuable consideration, without notice, who has the legal estate in him.

VENDORS AND PURCHASERS.—The law relating to vendors and purchasers of real property includes such subjects as the particulars and conditions of sale, the contract of sale, the abstract of title, requisitions, searches, &c., and the

preparation and completion of the conveyance. Dart Vend. & P. *passim*; Wats. Comp. Eq. 931 *et seq.* See the various titles; *and, also*, COVENANT, § 8 *et seq.*; SALE; SPECIFIC PERFORMANCE; TITLE, § 3 *et seq.*; TITLE-DEEDS.

VENDUE MASTER.—An auctioneer.

VENELLA.—A narrow or strait way. Monast. i. 438.

VENIA.—A kneeling or low prostration on the ground by penitents; pardon.

VENIA ÆTATIS.—A privilege granted by a prince or sovereign, in virtue of which a person is entitled to act, *sui juris*, as if he were of full age. Story Conf. L. 74.

Veniæ facilitas incentivum est delinquendi (3 Inst. 236). Facility of pardon is an incentive to crime.

VENIRE.—See *VENIRE FACIAS JURATORES*.

VENIRE DE NOVO, in criminal practice, is a writ issued by the court on a writ of error (*q. v.*), from a verdict given in an inferior court, vacating the verdict and directing the sheriff to summon jurors anew, whence the name of the writ. It is in fact a mode of directing a new trial. (Arch. Cr. Pl. 188; Pritch. Quar. Sess. 352. See *Reg. v. Murphy*, L. R. 2 P. C. 535, and the cases there cited. See *TRIAL*, §§ 6, 11.) It was formerly also used in civil actions. 2 Arch. Pr. (3 edit.) 27.

VENIRE DE NOVO, (is never equivalent to a "new suit"). 10 Pet. (U. S.) 125, 131.

VENIRE FACIAS AD RESPONDENDUM.—A writ to summon a person, against whom an indictment for a misdemeanor has been found, to appear and be arraigned for the offense. A justice's warrant is now more commonly used. Arch. Cr. Pl. 81. See *DISTRINGAS*; *OUTLAWRY*; *WARRANT*.

VENIRE FACIAS JURATORES.—A judicial writ directed to the sheriff, when issue is joined in an action, commanding him to cause to come, on such a day, twelve free and lawful men of his county, by whom the truth of the matter at issue might be better known. This writ was abolished in England by § 104 of the Common Law Procedure Act, 1852, and by § 105 a precept issued by the judges of

as-size is substituted in its place. The process so substituted is sometimes loosely spoken of as a *venue*.—*Brown*.

VENIRE FACIAS TOT MATRONAS.—A writ to summon a jury of matrons to execute the writ *de ventre inspiciendo* (q. v.)

VENTER.—NORMAN-FRENCH, *ventre*, (Loysel Inst. Cout. 56 and glossary); from Latin *venter*, the womb.

In the old books, *venter* is equivalent to mother: as when Littleton speaks of a man having issue two sons "by divers venters," i. e. by different wives; or of two brothers "by divers venters," meaning two brothers having different mothers. Litt. § 6.

VENTRE INSPICIENDO.—See DE VENTRE INSPICIENDO.

VENUE.—Said to be derived from Norman-French, *visne*; Latin, *vicinitas* (neighborhood), because in ancient times the jury was empaneled from the vill or hundred where the cause of action arose. See Diet s. v.; Reeves iii. 107; Co. Litt. 125 a; 1 Sm. Lead Cas. 692.

§ 1. In criminal procedure, the venue is a note in the margin of an indictment, giving the name of the county or district within which the court in which the indictment is preferred has jurisdiction. The common law rule is that the venue must be laid (i. e. the indictment must be preferred in a court having jurisdiction) in the county where the offense was committed, but in many cases it may by statute be laid in the county in which the offender was apprehended, or, in some cases, in any county. If a man is wounded in one county and dies in another, the venue may be laid in either. Arch. Cr. Pl. 25 *et seq.*; 4 Steph. Com. 363; R. v. Rogers, 3 Q. B. D. 28.

§ 2. Common law practice.—In the common law practice, the venue is that part of the declaration in an action which designates the county in which the action is to be tried. It is inserted in the margin of the declaration thus: "Middlesex to wit," &c. Venue is of two kinds, "transitory," or "local." It is transitory when the cause of action is of a sort which might have happened anywhere, in which case the plaintiff may adopt any county he pleases as a venue. It is local when the cause of action could have happened in one county only, and then the venue must be laid in that county. Thus, if the action is trespass for breaking the plaintiff's close, the venue must be laid in the county where the close is situated; for such a trespass

could have happened nowhere else. If it is trespass for assaulting the plaintiff, the venue is transitory, for such a cause of action might happen anywhere, and so, in general, in all cases of contract.

VENUE, (defined). 3 Code (N. Y.) § 24; 5 How. (N. Y.) Pr. 243.

— (synonymous with "place of trial"). 7 How. (N. Y.) Pr. 462.

— (change of). Coxe (N. J.) 203; 2 Halst. (N. J.) 171, 202; 5 Id. 231; South. (N. J.) 362, 718.

— (in a criminal cause, when may be changed). 1 Hill (N. Y.) 179.

— (may be changed after issue joined). Coxe (N. J.) 230.

— (motion to change, where must be made). 13 How. (N. Y.) Pr. 374.

— (requisites of affidavit to change). 1 Hill (N. Y.) 669, 671; 3 Halst. (N. J.) 160.

— (requisites of affidavit to resist motion for change of). 9 Wend. (N. Y.) 431.

— (what is not a change of). 3 How. (N. Y.) Pr. 71.

VERAY.—True.

Verba accipienda sunt cum effectu—ut sortiantur effectum (Bacon): Words are to be received with effect—so that they may produce effect.

Verba accipienda sunt secundum subjectam materiam (6 Co. 62): Words are to be understood with reference to the subject-matter.

Verba æquivoca, ac in dubio sensu posita intelliguntur digniore et potentiore sensu (6 Co. 20): Words equivocal, and placed in a doubtful sense, are to be taken in their more worthy and effective sense.

Verba aliquid operari debent—debent intelligi ut aliquid operentur (8 Co. 94): Words ought to have some operation; they ought to be interpreted in such a way as to have some operation.

Verba chartarum fortius accipiuntur contra proferentem (Co. Litt. 36): The words of charters are to be received more strongly against the grantor.

Verba cum effectu accipienda sunt (Bac. Max. 3): Words ought to be used so as to give them their effect.

Verba currentis monetæ, tempus solutionis designant (Dav. 20): The words "current money" designate current at the time of payment.

VERBA DE FUTURO.—See PER VERBA, etc.

VERBA DE PRÆSENTI.—See PER VERBA, etc.

Verba debent intelligi cum effectu, ut res magis valeat quam pereat: Words ought to be understood with effect, that a thing may rather be preserved than destroyed. See *Roe v. Tramarr*, 2 Sm. Lead. Cas. 530.

This maxim is closely allied to *Benignæ faciendæ sunt interpretationes chartarum ut res magis valeat quam pereat*. (The construction of deeds shall be made liberally that the subject matter may rather prevail than perish). Constructions must in all cases be reasonable, liberal, and favorable.

Verba dicta de persona intelligi debent de conditione personæ (2 Rolle 72): Words spoken of the person are to be understood of the condition of the person.

Verba generalia generaliter sunt intelligenda (3 Inst. 70): General words are to be generally understood.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ (Bacon): General words must be narrowed either to the nature of the subject-matter or to the aptitude of the person.

Such words must be understood with reference to the estate which is in the grantor at the time of the grant. Thus, a bill of sale assigned to R. "all the household goods and furniture of every kind and description in a certain house, and more particularly mentioned and set forth in an inventory or schedule of even date therewith," but it was held that only goods specified in the inventory passed, although not mentioning all the goods in the house.

Verba illata inesse videntur: Words referred to are considered to be incorporated.

Verba intentioni, non e contra, debent inservire (8 Co. 94): Words ought to be made subservient to the intent, not contrary to it.

The rule laid down in this maxim is one of the first and most important in the construction of contracts, so that they may be enforced according to the sense in which the parties mutually intended at the time of making the contract. Words and expressions are to be understood in their plain, ordinary, and popular sense, unless they may by custom of trade or the like, have acquired a peculiar sense and meaning.

Verba ita sunt intelligenda, ut res magis valeat quam pereat (Bacon): Words are to be so understood as that the subject-matter may be rather preserved than destroyed.

Verba posteriora, propter certitudinem addita, ad priora quæ certitudine indigent sunt referenda (Wing. 167): Subsequent words, added for the purpose

of certainty, are to be referred to preceding words which need certainty.

Verba relata hoc maxime operantur per referentiam ut in eis inesse videntur (Co. Litt. 359): Words to which reference is made in an instrument have this especial operation, that they are regarded as inserted in the clause referring to them.

Verba semper accipienda sunt in mitiori sensu (4 Co. 17): Words are always to be taken in their milder sense.

VERBAL NOTE.—A memorandum or note, in diplomacy, not signed, set when an affair has continued a long time without any reply, in order to avoid the appearance of an urgency which, perhaps, is not required; and, on the other hand, to guard against the supposition that it is forgotten, or that there is an intention of not prosecuting it any further —*Wharton*.

VERBAL PROMISE, (in a statute). 12 Serg. & R. (Pa.) 74.

VERDEROR.—An officer in the royal forest, whose office is properly to look to the vert, and see it well maintained; and he is sworn to keep the assizes of the forest, and view, receive, and enroll the attachments, and presentments of trespasses of vert and venison, &c. Manw. 332.

VERDICT.—LATIN: *veredictum*; *vere*, truthfully *dictum*, spoken, in accordance with the juror's oath.

§ 1. A verdict is the opinion of a jury (or of a judge sitting as a jury, see *Krehl v. Burrell*, 10 Ch. D. 420,) on a question of fact in a civil or criminal proceeding. The verdict of a jury must be unanimous.

§ 2. **General.**—A general verdict is where the jury find the point in issue generally, as where they find for the plaintiff or defendant, or return a verdict of guilty or not guilty.*

§ 3. **Special.**—A special verdict is where they find the facts of the case specially, i. e. they say that certain facts have been proved, leaving to the court the application of the law to the facts thus found. A special verdict is drawn like a special case (*q. v.*), settled by the counsel (and by the judge if necessary), and argued before the court in the same way as a demurrer. Sm.

* "It does not follow merely because a jury choose to return their verdict only in particular words, instead of saying aye or no, that the verdict is a special one. (See *per Patterson, J.*, in *Scales v. Key*, 11 Ad. & E. 819.) Accordingly,

where upon an issue bringing into question the existence of a custom, the jury found 'that the custom existed to 1689,' it was held that this was a verdict for the defendants, who alleged the custom." Arch. Pr. 394 n.

Ac. (11 edit.) 158. Formerly called a verdict at large. Litt. § 366.

§ 4. Verdict subject to special case.—Where a doubtful question of law arises, the jury may, instead of giving a special verdict, find a general verdict for either of the parties, subject to a special case; the special case is drawn in accordance with the facts proved at the trial and settled like a special verdict. (Chit. Pr. 452 *et seq.*; Sm. Ac. (11 edit.) 162.) It seems that this mode of deciding questions is still available (Sm. Ac. (12 edit.) 140), though rarely resorted to (Arch. Pr. 394). As to special findings under Stat. 3 and 4 Will. IV. c. 42, *see* Chit. Gen. Pr. 406.

§ 5 Partial.—A partial verdict in criminal practice is where the jury convict the prisoner on part of the indictment and acquit him as to the residue. Arch. Cr. Pl. 170.

§ 6. When a coroner's jury find the death of a person without saying how he came by it, this is called an "open verdict." *See* INQUEST.

§ 7. Judgment after verdict.—On the trial of an action, when the jury have found their verdict, the judge may direct that judgment be entered for any party, or adjourn the case for further consideration, or leave any party to move for judgment. (*See* FURTHER CONSIDERATION, § 3; JUDGMENT, § 6; MOTION FOR JUDGMENT; SIGNING JUDGMENT.) Any party may also move for a new trial (*see* TRIAL, § 6), or apply to the court of appeal to set aside the judgment, if it has been directed to be entered by the judge before whom the action was tried. *See* ACTION; ACQUITTAL; CONVICTION; FINDING; INQUISITION.

VERDICT, (defined). 28 Conn. 144; 26 Ind. 366.

— (in an agreement). Burr. 1477.

— (in New York code, § 401). 8 How. (N. Y.) Pr. 171.

— (must be public). 6 Johns. (N. Y.) 68.

— (must be rendered by voice in open court). Penn. (N. J.) 165.

— (must comprehend the whole issue or issues submitted to the jury). 7 Halst. (N. J.) 352.

— (mistake of clerk in entering). 11 Otto (U. S.) 557.

— (cures a defect in pleading). 2 Otto (U. S.) 135; 13 *Id.* 412.

VERDICT, CHANGE, (what is not). 25 Cal. 460.

VERDICT, GENERAL, (defined). 8 Ga. 201, 208.

VERDICT, SPECIAL, (jury in justice's court may render). South. (N. J.) 207.

Veredictum, quasi dictum veritatis; ut iudicium quasi juris dictum (Co. Litt. 226): The verdict is, as it were, the dictum of truth; as the judgment is the dictum of law.

VERGE.—"At common law, the coroner of the county had no jurisdiction within the compass of the king's court, which bounds the jurisdiction of the lord high steward of the household, and comprehends a circuit of twelve miles round the residence of the court [wherever held]. This jurisdiction is usually called the verge, within which the coroner of the king's household, or, as commonly called, the "coroner of the verge," had jurisdiction over all matters within the duty of a coroner, exclusive of the coroner of the county. A jurisdiction so exclusive, particularly as the king's court was movable, was found to be attended with many inconveniences . . . and therefore it was found expedient to impart, in some cases, to the coroner of the county, a jurisdiction concurrent with that of the coroner of the verge." Jervis Cor. 5, 59; Stats. 28 Edw. I. c. 3; 33 Hen. VIII. c. 12, s. 3. *See* TENANTS BY THE VERGE.

VERGELT.—The Saxon fine for a crime *See* WERGILD.

VERIFICATION.—The proper form of concluding any pleading subsequent to the declaration, in which new matter is alleged. Under the common law practice it is made in the words, "and this he is ready to verify."

VERIFIED, (in a statute). 1 Code (N. Y.) 26.

VERIFY, (in a statute). 3 How. (N. Y.) Pr. 284.

Veritas, a quocunque dicitur, a Deo est (4 Inst. 153): Truth, by whomsoever pronounced, is from God.

Veritas demonstrationis tollit errorem nominis (1 *Ld.* Raym. 303): The truth of the demonstration removes the error of the name.

Veritas nihil veretur nisi abscondi (9 Co. 20): Truth fears nothing but concealment.

Veritas nimium altercando amittitur (Hob. 344): By too much altercation truth is lost.

Veritas, quæ minime defensatur, opprimitur; et qui non improbat, approbat (3 Inst. 27): Truth which is not sufficiently defended, is overpowered; and he who does not disapprove, approves.

Veritatem qui non libere pronunciat, proditor est veritatis (4 Inst. Epil.):

He who does not freely speak the truth, is a betrayer of truth.

VERNA.—In the civil law, a slave born in his master's house.

VERSUS.—Abbrev. *v.*, or *vs.*, against. As *A. B. versus C. D.*

VERT.—Otherwise called "*greenhue*," everything that bears a green leaf within a forest that may cover a deer; but especially great and thick coverts. Manwood (part 2, p. 33,) divides "vert" into "overt-vert" and "nether-vert;" the "overt-vert" is that which is termed "haunt-boys," and "nether-vert" "sub-boys;" and into "special vert," which is, all trees growing within the forest that bear fruit, to feed deer, because the destroying of it is more grievously punished than of any other vert. (See 3 Steph. Com. (7 edit.) 317, *n.*)—*Cowell*.

Also, that power which a man has, by royal grant, to cut green wood in a forest.

Also, in heraldry, green color called "venus" in the arms of princes, and "emerald" in those of peers, and expressed in engravings by lines in bend.—*Wharton*.

VERY LORD AND VERY TENANT means an immediate lord and tenant, (Blount *s. v.* citing Brook, Abr. tit. Hariot 23;) as where A. holds land of B. without any mesne lord. See **LORD**, § 2.

VESSEL.—A ship, brig, sloop, or other craft used in navigation. The word is more comprehensive than "ship" (*q. v.*)

VESSEL, (defined). 2 Low. (U. S.) 36; 27 La. Ann. 607, 611; 3 Mass. 263, 266.

—(what is). 8 Ben. (U. S.) 556; 4 Car. & P. 559.

—(a canal boat is). 30 How. (N. Y.) Pr. 898; 13 Hun (N. Y.) 632; 71 N. Y. 413.

—(a float or ark is not). 9 Wend. (N. Y.) 592, 593.

—(a floating dry dock is). 8 Daly (N. Y.) 387.

—(an open boat is not). 5 Mas. (U. S.) 120, 137.

—(in a statute). 1 Holmes (U. S.) 467, 474.

—(in act concerning the anchoring of). 70 N. Y. 104.

VESSEL LYING AT ANCHOR, (when is not). 77 N. Y. 448.

VESSEL OF THE UNITED STATES, (in statute of the United States). 12 Heisk. (Tenn.) 366.

—(a canal boat or scow is not). 17 Barb. (N. Y.) 523.

VESSEL WITH ITS APPURTENANCES, (bill of sale of). 2 Root (Conn.) 71.

VESSEL WRECKED IN THE UNITED STATES, (what is not). 8 Ben. (U. S.) 109.

VESSELS, (applies to canal boats). 45 Barb. (N. Y.) 269.

—(in act authorizing their arrest for debts contracted, &c.). 17 Johns. (N. Y.) 54; 1 Wend. (N. Y.) 557; 5 Id. 564.

VEST—VESTED.—

§ 1. When a person becomes entitled to a right, estate, &c., it is said to vest in him.

§ 2. **Vested in possession, in interest.**—An estate or interest may vest in one of two manners, namely, in possession or in interest. An estate is said to be vested in possession when it gives a present right to the immediate possession of property; while an estate which gives a present right to the future possession of property is said to be vested in interest; thus, if land is given to A. for life, and after his death to B. in fee, then A.'s estate is vested in possession, while B.'s estate is vested in interest. If B. dies before his estate vests in possession, it passes to his representatives (his heir or devisee). As a general rule, "vested" means "vested in interest," as opposed to "contingent" (*q. v.*) Thus, remainders are divided into vested and contingent. See **REMAINDER**.

§ 3. An estate or interest is said to be "vested subject to being divested" when it is vested, but is defeasible on the happening of a particular event. Thus, where property is given to A., an infant, absolutely, with remainder over to some one else if he dies under twenty-one, he takes a vested interest determinable on his death under age. Wats. Comp. Eq. 1092, 1093. See **CONDITION**.

§ 4. **By statute.**—"Vest" is used especially to denote a transfer by or under a statute. Thus, by the English Bankruptcy Act, 1869, as soon as a person is adjudicated bankrupt, his property vests in the trustee for the time being (§ 17), *i. e.* the property is transferred to the trustee in the same way as if the bankrupt had executed a conveyance of it. (See **VESTING ORDER**.) A statutory transfer of this kind may be either absolute (as in the above example) or limited. Thus, where an act of parliament enacts that a street shall vest in an urban sanitary authority, this means that the surface of the land, and so much of the soil as is necessary for its use as a street, shall be transferred to the authority. *Coverdale v. Charlton*, 4 Q. B. D. 104.

§ 5. **"Vested interests."**—Vested is also applied, in a semi popular sense, to rights, interests and expectancies, with

which, it is considered, the legislature ought not to interfere without giving compensation. Such are the rights of land-owners, which are interfered with when a statute is passed authorizing the compulsory purchase of their land for the purposes of a railway. (*See Austin* i. 887.) The English Endowed Schools Act, 1869, enumerates various kinds of "vested interests" for which compensation is to be made, (*see In re Almeyn's College*, 1 App. Cas. 68; *In re Shaftoe's Charity*, 3 *Id.* 872;) such as the interest of a child on the foundation of an endowed school, by which seems to be meant the child's expectation or hope that it will be kept in the school. Such interests are obviously not of a legal nature.

VEST, (in a statute). 3 Q. B. D. 376.

VESTA.—The crop on the ground.—*Cowell*.

VESTED, (equivalent to "accrued"). 2 Disn. (Ohio) 15, 21.

— (when legacies are not). 1 Paige (N. Y.) 32.

— (in a will). L. R. 5 Eq. 389; 16 *Id.* 208.

— (in a will, equivalent to "payable"). 1 Younge & Coll. C. C. 121.

VESTED ESTATE, (defined). 4 Keyes (N. Y.) 569.

— (what is not). 10 Barb. (N. Y.) 338, 396.

VESTED ESTATE IN REMAINDER, (is a legal estate assignable and subject to sale under execution). 4 Abb. (N. Y.) App. Dec. 218.

VESTED IN INTEREST.—*See* VEST, § 2.

VESTED IN INTEREST, (when a remainder is). 5 Paige (N. Y.) 463.

— (under a will). L. R. 2 P. & D. 47.

VESTED IN POSSESSION.—*See* VEST, § 2.

VESTED INTEREST, (what is). Sax. (N. J.) 145.

VESTED LEGACY.—*See* LEGACY.

VESTED LEGACY, (what is). 2 Gr. (N. J.) 170; Penn. (N. J.) 754; 11 Wend. (N. Y.) 260; 4 Wheel. Am. C. L. 424; 3 Atk. 645.

VESTED REMAINDER.—An expectant estate, which is limited or transmitted to a person who is capable of receiving the possession, should the particular estate happen to determine; as a limitation to A. for life, remainder to B.

and his heirs; here, as B. is in existence he is capable (or his heirs, if he die,) of taking the possession whenever A.'s death may occur. A vested estate may take effect though the preceding estate be defeated, as when an infant makes a lease for life with a remainder over, and on majority he disagrees to the estate for life, yet the remainder is good, having been duly vested by a good title. *Fearne Rem.* 308; 1 Steph. Com. (7 edit.) 326.

The person who is entitled to a vested remainder having a present vested right of future enjoyment, *i. e.* an estate *in presenti*, to take effect in possession and permanency of the profits *in futuro*, can transfer, alien and charge it much in the same manner as an estate in possession. 2 Cruise Dig. 204.

VESTED REMAINDER, (defined). 1 Abb. (U. S.) 169.

— (what is). 6 Wall. (U. S.) 458.

VESTED RIGHT, (defined). 48 Ill. 331; 87 *Id.* 138; 12 Serg. & R. (Pa.) 360; 10 Am. Dec. 134.

— (what is not). 79 N. C. 315, 317.

— (there is none in penalties). 48 Ill. 331.

— (in an act of congress). 21 Wall. (U. S.) 860.

VESTING FOR A TERM, (in a statute). 4 Burr 2334.

VESTING ORDER.—Under the English Trustee Acts (*q. v.*), when a person in whom lands, stock or choses in action are vested upon any trust or by way of mortgage, is a lunatic, so found by inquisition, or of unsound mind, or an infant, or is out of the jurisdiction, or refuses to convey or transfer the property, or has died without leaving any known heir or devisee or personal representative (as the case may be), the court may make an order vesting the property in such person or persons, in such manner, and for such estate as it may direct, and on that being done, the title to the property vests in him or them accordingly. In cases of lunacy and unsoundness of mind, the order is made by the Lord Chancellor or Lords Justices of Appeal; in other cases by the High Court in the Chancery Division. As to whether vesting orders can be made in chambers, *see Frodsham v. Frodsham*, 15 Ch. D. 317.

When, in an action or suit, a judgment or decree is made directing the sale or conveyance of lands, the court may make vesting orders for carrying the same into effect. As to the acts generally, *see* Dan. Ch. Pr. 1798 *et seq.*

VESTRY.—

§ 1. In English ecclesiastical law, a vestry, properly speaking, is the assembly of the whole of a parish, met together in some convenient place, for the despatch of the affairs and busi-

ness of the parish, especially to make rates for the relief of the poor (*see* POOR LAW), the repair of the church, &c.; and this meeting being formerly commonly holden in the vestry adjoining to or belonging to the church, it thence takes the name of vestry, as the place itself does, from the priest's vestments, which are usually deposited and kept there. (Phillim. Ecc. L. 1871; Stats. 58 Geo. III. c. 69; 59 Geo. III. c. 85.) Meetings in the vestry room of a church may be forbidden by the Poor Law Commissioners (now the Local Government Board, *q. v.*) Stat. 13 and 14 Vict. c. 57.

§ 2. **Select vestries.**—In ordinary cases, the vestry consists of all persons rated for the relief of the poor in the parish, but in some parishes there exists a custom by which a certain number of persons (in many cases self-elected) manage the concerns of the parish in lieu of the whole body of parishioners: these are called "select vestries." (Phillim. Ecc. L. 1890.) Under Stat. 59 Geo. III. c. 12, every parish may establish a select vestry for the concerns of the poor of the parish. (*See* OVERSEERS, § 1.) Vestries in the metropolitan parishes are regulated by special statutes. *See* 18 and 19 Vict. c. 120, and 19 and 20 Vict. c. 112. *See, also*, METROPOLITAN BOARD OF WORKS.

§ 3. In modern times, numerous duties have been imposed on vestries by statute: in respect of burial grounds (Stats. 15 and 16 Vict. c. 85; 18 and 19 Vict. c. 128; 20 and 21 Vict. c. 81); in lighting and watching parishes (Stat. 3 and 4 Will. IV. c. 90; *see* RATE, § 2, *x*); under the Public Libraries Acts, 1855, 1866, 1871 and 1877; and the Baths and Washhouses Acts, 1846 and 1878.

VESTRY CESS.—A rate levied in Ireland for parochial purposes, abolished by 27 Vict. c. 17.

VESTRY CLERK.—An officer appointed to attend vestries, and take an account of their proceedings, &c. 1 Steph. Com. (7 edit.) 122 *n.*; 2 *Id.* 699 *n.*; and 13 and 14 Vict. c. 57 ss. 6-8.

VESTRYMEN.—A select number of parishioners elected in large and populous parishes to take care of the concerns of the parish, so called because they used ordinarily to meet in the vestry of the church.—*Cowell.*

VESTURA.—A crop of grass or corn.—*Cowell.* Also, a garment; metaphorically applied to a possession or seisin.

VESTURE.—

§ 1. If a man, being seised in fee of land, grants the vesture of the land to another man in fee, the land itself will not pass to the grantee, but only a particular right in the land; "for thereby he shall not have the houses, timber-trees, mines, and other reall things parcell of the inheritance, but he shall have the vesture of the land (*i. e.*) the corne, grass, underwood, sweepage and the like, and he shall have an action of trespass *quare clausum fregit*," for any infringement of his right. Co. Litt. 4 b.

§ 2. **Sola vestura.**—"A man may prescribe or alledge a custome to have and enjoy *solum vesturam terræ* from such a day till such a day, and hereby the owner of the soyle shall be excluded to pasture or feed there" (Co. Litt. 122 a); and it seems that a person may also prescribe for a sole vesture, excluding the owner from year's end to year's end. Wms. Saund. notes to Potter v. Norih.

§ 3. **Prima vestura.**—A right of *prima vestura* gives the right of mowing the first crop. L'evesque de Oxford's Case, Palm. 174.

§ 4. The right of vesture seems to be an incorporeal hereditament. Wms. Comm. 19; *but, see* Hall Profits à Prend. 18; Burt. Comp. § 1158.

VESTURE, (grant of). 1 Shep. Touch. 97.

VETERA STATUTA.—The ancient statutes, commencing with *Magna Charta*, and ending with those of Edward II., including also some which, because it is doubtful to which of the three reigns of Hen. III., Edw. I. or Edw. II., to assign them, are said to be *meerti temporis*. 2 Reeves Hist. Eng. Law c. viii. p. 85, and c. xii. p. 354.

VETITUM NAMIUM, or REPETITUM NAMIUM.—A second or reciprocal distress, in lieu of the first, which has been eligned.

VETO.—A prohibition, or the right of forbidding; especially applied to the power of the executive of refusing assent to a bill passed by the two houses of the legislature.

VEXATA QUÆSTIO.—An undetermined point, which has been often discussed.

VEXATIOUS.—A proceeding is said to be vexatious when the party bringing it is not acting *bonâ fide*, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result. Such a proceeding is often described as "frivolous and vexatious," and the court may stay it on that ground. (*Castro v. Murray*, 10 Ex. 213.) If an action fails, and a second action is brought oppressively or vexatiously for the same cause of action, the court will stay the proceedings until the costs of the former action are paid. (Arch. Pr. 1105.) As to actions of ejectment, *see Id.* 855.) So, where a claim or defense is trifling or vexatious, the court will not grant a new trial. *Id.* 1222.

VEXATIOUS ACTION, (what is). 3 Wils. 152.

VI BONORUM RAPTORUM.—In the Roman law, the offense of rapina or robbery, *i. e.* theft accompanied with violence (*vis*), might be treated as a tort, in which case the action

called *vi bonorum raptorum* lay to recover four-fold if the action was brought within the year, and one-fold if brought afterwards; or it might be treated as a crime and prosecuted in a *publicum judicium* called *de vi* under the *Lex Julia*.—*Brown*.

VI ET ARMIS.—With force and arms. Co. Litt. 161b; 3 Bl. Com. 120. See *TRESPASS*, § 1.

VI ET ARMIS, (when necessary in a declaration). Salk. 636.

— (in trespass is form only). Cro. Jac. 129, 130, 526, 537; 1 Saund. 81.

— (effect of the omission of, in an indictment). 2 Tyler (Vt.) 166; 3 P. Wms. 464, 493.

VI LAICA REMOVENDA.—See *DE VI LAICA REMOVENDA*.

VIA.—The right to use a way for any purpose. Cum. Civ. L. 83.

VIA REGIA.—The highway or common road, called the "queen's way," because under her protection it was sometimes called *via militaris*.—*Bract*, l. 4.

Via trita est tutissima (10 Co. 142): The trodden path is the safest.

VIABILITY.—A capability of living after birth; extra-uterine life.

VLÆ SERVITUS.—A right of way over another's land.

VIAGERE, RENTE.—In the French law, a rent-charge or annuity payable for the life of the annuitant.

VICAR.—

§ 1. In the original sense of the word, a vicar is an incumbent appointed to an appropriated church. A vicar is, therefore, in effect, a perpetual curate with a standing salary. (See *APPROPRIATION*, § 7; *IMPROPRIATION*; *RECTOR*; *CURATE*; *TITHES*, § 3.

§ 2. Every incumbent of a parish church, not being a rector, who is authorized to solemnize marriage, baptisms, &c., and to take for his sole benefit the fees payable thereon, is a vicar for the purpose of style and designation, but not for any other purpose. 1 Bl. Com. 386; 2 Steph. Com. 682; Wms. Real Prop. 345; Phillim Ecc. L. 2177; Stat. 31 and 32 Vict. c. 117.

VICAR-GENERAL.—In English law, an ecclesiastical officer appointed by a bishop to act by his authority and under his direction in matters purely spiritual, as visitation, correction of manners, &c., "with a general inspection of men and things, in order to the preserving of discipline and good government in the church." Gibs. Cod. xxii.; Phillim. Ecc. L. 1208. See *CHANCELLOR*, § 5; *OFFICIAL PRINCIPAL*.

VICARAGE.—(1) The benefice of a vicar; (2) his house. 2 Steph. Com. (7 edit.) 682, and 81, and 32 Vict. c. 117, § 2.

VICARIAL TITHES.—See *TITHES*.

VICARIO, &c.—An ancient writ for a spiritual person imprisoned, upon forfeiture of a recognizance, &c.—*Reg. Orig.* 147.

Vicarius non habet vicarium: A delegate cannot have a delegate.

VICE-ADMIRAL.—An under admiral at sea, or admiral on the coasts; a naval officer of the second rank.

VICE-ADMIRALTY COURTS.—Courts having admiralty jurisdiction in the British colonies and possessions. Rose. Adm. 84; Stats. 26 and 27 Vict. c. 24; 30 and 31 Vict. c. 45.

VICE-CHAMBERLAIN.—A great officer next under the lord chamberlain, who, in his absence, has the rule and control of all officers appertaining to that part of the royal household which is called the chamber above stairs.

VICE-CHANCELLOR.—

§ 1. In English law.—A judge of the High Court of Justice. The first vice-chancellor (styled vice-chancellor of England) was appointed in 1813 to relieve the lord chancellor of some of his duties as a judge of first instance of the Court of Chancery; in 1841, two more vice-chancellors were appointed, partly to take over the equity business of the Court of Exchequer, but the number of three was not made permanent until 1852. (Haynes Eq. 34.) The name vice-chancellor is, however, much older than 1813; officers bearing that title, who acted in the chancellor's absence and kept the great seal, are mentioned in Henry's II.'s reign. Mad. Exch. 76 *et seq.*; 1 Spence Eq. 117.

§ 2. The vice-chancellors and the master of the rolls (*q. v.*) were the judges of first instance of the Court of Chancery, and on the formation of the Supreme Court of Judicature they were transferred to the Chancery Division of the High Court of Justice (*q. v.*) (Jud. Act, 1873, ss. 5, 31.) The judges appointed as successors to the present vice-chancellors do not bear that title, but are called "justices of the High Court." *Id.* s. 5.

§ 3. One of the vice-chancellors (usually the senior vice-chancellor) constituted a court of appeal in equity business from the county courts and the Chancery Court of Lancaster. (County Courts Act, 1865; Dan. Ch. Pr. 1975.) All appeals from inferior courts are now heard by Divisional Courts of Appeal of the High Court. Jud. Act, 1873, s. 45.

VICE-CHANCELLOR OF THE UNIVERSITIES.—See *CHANCELLOR OF THE UNIVERSITIES*.

VICE-COMES.—A viscount; a sheriff

Vice-comes dicitur quod vicem comitis suppleat (Co. Litt. 168). "Vice-comes" (sheriff) is so called because he supplies the place of the "comes" (earl).

VICE-COMES NON MISIT BREVE.—The sheriff has not sent the writ. This countenance is abolished by r. 31, H. T. 1853.

VICE-CONSTABLE OF ENGLAND.—An ancient officer in the time of Edward IV.

VICE-CONSUL.—One who acts for a consul; a sheriff. *See* CONSUL.

VICE-DOMINUS.—A sheriff.—*Ingulp.*

VICE-DOMINUS EPISCOPI.—The vicar-general or commissary of a bishop.—*Blount.*

VICE-GERENT.—A deputy or lieutenant.

VICE-MARSHAL.—An officer who was appointed to assist the Earl Marshal.

VICE-ROY.—The sovereign's lord-lieutenant over a kingdom, such as Ireland.

VICE-TREASURER.—*See* UNDER-TREASURER.

VICINAGE.—*See* COMMON, § 8.

VICINAGE, (from which jurors are to be summoned). 18 Mich. 459, 468.

Vicini viciniore præsumuntur scire (4 Inst. 173): Persons living in the neighborhood are presumed to know the neighborhood.

VICINITY, (in an application for a policy of insurance). 12 Gray (Mass.) 545.

— (agent to effect insurances for). 23 Wend. (N. Y.) 18.

VICIOUS INTROMISSION.—In the Scotch law, a meddling with the movables of a deceased, without confirmation or probate of his will, or other title.

VICIS ET VENELLIS MUNDANDIS.—An ancient writ against the mayor or bailiff of a town, &c., for the clean-keeping of their streets and lanes.—*Reg. Orig.* 267.

VICOUNTIEL, or VITCONTIEL.—Anything that belongs to the sheriffs, as *vicontiel writs*, &c. such as are triable in the sheriff's court. As to vicontiel rents, *see* 3 and 4 Will. IV. c. 99, §§ 12, 13, which places them under the management of the commissioners of the woods and forests.—*Cowell.*

VICOUNTIEL JURISDICTION.—That jurisdiction which belongs to the officers of a county, as sheriffs, coroners, &c.

VICTOR TOWNLEY'S ACT.—The Stat. 27 and 28 Vict. c. 29, amending 3 and 4 Vict. c. 54. This act was passed (in consequence of the escape from justice of the notorious criminal whose name it has acquired), to require

more strict proof of the condition of prisoners (especially those under sentence of death) who are supposed insane.—*Wharton.*

VIRTUAL, (salt is). Cro. Car. 231.

— (yeast is). 5 Man. & Ry. 162.

VICTUALS, (what are). 10 Barr. & C. 74.

VIDAME.—A vavasor (*q. v.*)

VIDE.—A word of reference: *vide ante*, or *vide supra*, refers to a previous passage; *vide post*, or *vide infra*, to a subsequent passage in a book.

Videbis ea sæpe committi quæ sæpe vindicantur (3 Inst. Epil.): You will see these things frequently committed which are frequently punished.

VIDELICET.—To wit. A word used in pleading to precede the specification of particulars which need not be proved. *See* SCILICET.

VIDELICET, (defined). Hob. 171, 172, 284.

— (in a grant). 5 Mod. 25, 29.

— (in a will). 4 Mod. 141.

— (effect of in pleading). 47 Ill. 175; 16 Mass. 129; 5 Pick. (Mass.) 412; 2 Munf. (Va.) 88; 7 Wheel. Am. C. L. 344; 3 Bing. 472; 2 Brod. & B. 659; Gould Pl. § 35; 1 Ld. Raym. 367; 2 Id. 819, 1562; 5 Moo. 538; 1 Stark. 3; 3 Id. 23; 8 Taunt. 107; 3 Wils. 254. — (does not render an averment immaterial). 6 T. R. 460, 463.

— (avertment of material matter under). 1 Cow. (N. Y.) 671; 7 Id. 43; 4 Johns. (N. Y.) 450; 19 Id. 68; 2 Saund. 291 *n.*; 3 T. R. 68; 4 Id. 690; 5 Id. 71.

— (repugnant to the preceding matter is void). 1 Saund. 169, 170.

— (when may be rejected). 3 Ves. 194.

— (when immaterial matter under, cannot be rejected as surplusage). 1 Mas. (U. S.) 66.

VIDIMUS.—An inspeximus (*q. v.*) Barr. Stat. 5.

VIDUITATIS PROFESSIO.—The making a solemn profession to live a sole and chaste woman.

VIDUITY.—Widowhood.

VIEW.—When an action or other proceeding concerns an immovable thing, such as land or houses, it is frequently desirable to have it seen and examined by the jury, referee, &c., before the trial. In the English Queen's Bench Division an order or rule to view may be obtained for this purpose (the old writ of view having been abolished), and shewers (*q. v.*) are generally appointed. Only a few of the jury usually "have the view," and these are hence called the "viewers." Chit. Gen. Pr. 371, 382; Arch. Pr. 339. *See* INSPECTION, § 2.

VIEW, (costs of). South. (N. J.) 350.

VIEW AND DELIVERY.—When a right of common is exercisable not over the

whole waste, but only in convenient places indicated from time to time by the lord of the manor or his bailiff, it is said to be exercisable after "view and delivery." *Elt. Com.* 233. *See ASSIGNMENT*, § 6; *COMMON*; *STINT*, § 1.

VIEW, HIS OWN, (in a statute). 2 *Chit. Gen. Pr.* 151.

VIEW OF AN INQUEST.—A view or inspection taken by a jury, summoned upon an inquisition or inquest, of the place or property to which the inquisition or inquiry refers.

VIEW OF FRANKPLEDGE.—*See FRANKPLEDGE*.

VIEW, TO, (defined). 63 *Me.* 385, 387.

VIEWERS.—Persons appointed by the courts to see and examine certain matters and make a report of the facts, together with their opinion, to the court. In practice, they are usually appointed to lay out roads, and the like.—*Bouvier*.

VIEWERS, (in fence act). 46 *Iowa* 134.

VIFGAGE.—*Vivum vadum* (*q. v.*)

VIGIL.—The eve or next day before any solemn feast.

Vigilantibus non dormientibus jura subveniunt (Wing. 692): Laws come to the assistance of the vigilant, not of the sleepy. Before relieving a party from a contract on the ground of fraud, it must be made to appear to the courts that he exercised a due degree of caution before entering into such contract. *See* 6 *Stew.* (N. J.) 21.

VIIS ET MODIS.—In the Ecclesiastical Courts, service of a decree or citation *vis et modis*, *i. e.* by all "ways and means" likely to affect the party with knowledge of its contents, is equivalent to substituted service in the temporal courts, and is opposed to personal service. *Phillim. Ecc. L.* 1258, 1283. *See SERVICE*, § 8.

VILL is in law the same thing as "town" in the technical sense of that word. (*Co. Litt.* 115b; 1 *Bl. Com.* 115. *See TOWN*, § 1.) A "vill" seems originally to have been used in the same sense as the Latin *villa*, and to have signified a mere collection of houses in the country, such as buildings on a farm or a manor (*villa ruralis*), (*Spel. Gloss. s. v. Villa; Villanus*), in opposition to a walled town (*villa muralis*), namely, a city or borough. (*See VILLEIN*.) "Villa ruralis" appears to be the same thing as an "upland town." *Spel. Gloss. s. v. Villa; Villanus*. "Upland" literally means "in the country," "rustic." *See Ælfric's Homilies* (Thorpe's edit.) vol. ii. 302. *See TOWN*, § 1.

VILL, (what is). *Cro. Jac.* 263.
—(synonymous with "parish"). *Burr.* 2510; *Cro. Car.* 151.

Villa est ux pluribus mansionibus vicinata et collata ex pluribus vicinis, et sub appellatione villarum continentur burgi et civitates (*Co. Litt.* 115); Vill is a neighborhood of many mansions, a collection of many neighbors, and under the term of "vills," boroughs and cities are contained.

VILLA REGIA.—A manor held by the crown.

VILLAGE, (defined). 71 *Ill.* 568; 46 *Iow.* 256.

—(what is). 27 *Ill.* 48.

—(grant of). *Shep. Touch.* 92.

—(used in a statute by mistake for town). 25 *Minn.* 404.

VILLANIS REGIS SUBTRACTIS REDUCENDIS.—A writ that lay for the bringing back of the king's bondmen, that had been carried away by others out of his manors whereto they belonged.—*Reg. Orig.* 87.

VILLEIN.—**NORMAN-FRENCH**: *vileyn* (*Britt.* 77b); **LOW LATIN**: *villanus*, from *villa*, a farm. *Littre Dict. s. v. Villan.*

§ 1. Formerly there existed a class of persons in a position "superior to downright slavery, but inferior to every other condition." (2 *Bl. Com.* 92. *See Britton's* account of the origin of villenage (77b).) They belonged principally to lords of manors, and were either *villains regardant*, *i. e.* annexed to the manor or land, or else they were *in gross*, or at large, *i. e.* annexed to the person of the lord; thus, where a lord granted a villein regardant by deed to another person, he became a villein in gross. (*Litt.* § 181.) Villeins could not leave their lord without his permission, nor acquire any property, (*see, however, as to choses in action, &c., Co. Litt.* 117a,) but they could sue any one except their lord, and were protected against atrocious injuries by him. 2 *Bl. Com.* 93 *et seq.*; *Litt.* § 189 *et seq.*

§ 2. Villenage has never been formally abolished, but it had become rare in Edward VI.'s reign, and disappeared altogether under the Stuarts. 2 *Bl. Com.* 96, n. (24).

See COPYHOLD; MANUMISSION; MARKET; NEIFE; SERVICE, § 3; *TENURE; VILLENAGE*.

VILLEIN IN GROSS.—One annexed to the person of the lord, and transferable by deed from one owner to another. 1 *Steph. Com.* (7 edit.) 216; 2 *Broom & H. Com.* 183.

VILLEIN REGARDANT.—One annexed to the manor or land. 1 *Steph. Com.* (7 edit.) 216.

VILLEIN SERVICES.—Base, but certain and determined services. 1 *Steph. Com.* (7 edit.) 187.

VILLEIN SOCAGE.—*See SOCAGE*, § 2.

VILLEIN TENURE.—*See TENURE*, § 7; *SERVICE*, § 3.

VILLENAGE.—

§ 1. Villenage signified (1) the status of a villein (*q. v.*); and (2) an obsolete tenure, which existed where land was held of a lord of a manor by a villein, or by a free person by villein or base service. It has gradually become either extinct or converted into copyhold tenure. Litt. § 172; 2 Bl. Com. 62, 98.

§ 2. Privileged.—There was also a kind of tenure in villenage known as privileged villenage or villein-socage, which existed in certain lands of the crown. The tenants of these lands could not be removed from their lands so long as they did their services, which differed from ordinary villein services in being certain. This kind of tenure gradually became converted into tenure in ancient demesne (*q. v.*) 2 Bl. Com. 98. See COPYHOLD.

VILLENOUS JUDGMENT.—A judgment which deprived one of his *libera lex*, whereby he was discredited and disabled as a juror or witness; forfeited his goods and chattels, and lands for life; wasted the lands, razed the houses, rooted up the trees, and committed his body to prison. It has become obsolete. 4 Bl. Com. 136; 4 Steph. Com. (7 edit.) 239; 4 Broom & H. Com. 153.

VILLS, (synonymous with "tithings" and "towns"). 1 Bl. Com. 114.

Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ, non ad sumendam vindictam sed ad propulsandam injuriam (Co. Litt. 162): It is lawful to repel force by force, so as it be done with the moderation of blameless defense; not to take revenge, but to repel injury.

VINAGIUM.—A payment of a certain quantity of wine instead of rent for a vineyard. 2 Mon. Ang. t. 980

VINCULO MATRIMONII.—See A **VINCULO MATRIMONII**; **DIVORCE**.

VINCULUM JURIS.—In the Roman law, an obligation is defined as a *vinculum juris*, i. e. "a bond of law," whereby one party becomes or is bound to another to do something according to law.

VINDEX.—In the civil law, a defender.

VINDICATIO.—In the civil law, a real action claiming property for its owner.

VINDICATORY PARTS OF LAWS.—The sanction of the laws, whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty. 1 Steph. Com. (7 edit.) 37; 1 Broom & H. Com. 50-1. See **SANCTION**.

VINDICTA.—In the Roman law, a rod or wand; and from the use of that instrument in their course, various legal acts came to be dis-

tinguished by the term, e. g. one of the three ancient modes of manumission was by the *vindicta*; also, the rod or wand intervened in the progress of the old action of *vindicatio*, whence the name of that action.—*Brown*.

VINDICTIVE DAMAGES.—Damages given on the principle of punishing the defendant, over and above compensating the plaintiff. See **DAMAGES**, § 4; **EXEMPLARY DAMAGES**.

VINOUS LIQUOR, (in liquor act). 55 Ala. 16.

VIOL.—Rape. Barr. Stat. 139.

VIOLATION OF SAFE CONDUCTS.—An offense against the laws of nations. 4 Steph. Com. (7 edit.) 217.

VIOLATION OF WOMEN.—See **RAPE**.

VIOLENCE.—See **THREATS**.

VIOLENCE, (defined). Busb. (N. C.) L. 9, 13. — (synonymous with "physical force"). 31 Conn. 212.

VIOLENCE, PERSONAL, (by husband, what is). 2 Car. & P. 22.

VIOLENT PRESUMPTION.—See **PRESUMPTION**, § 2.

VIOLENT PROFITS.—Mesne profits in Scotland. "They are so called because due on the tenant's forcible or unwarrantable detaining the possession after he ought to have removed." (Ersk. 2, 6, 54.)—*Bell Dict.*

Violenta præsumptio aliquando est plena probatio (Co. Litt. 6b): Violent presumption is sometimes full proof.

VIOLENTLY, (not synonymous with "by force"). 39 Me. 322.

— (in indictment for rape). 32 La. Ann. 335; 8 Gray (Mass.) 489, 490.

VIOLENTLY AND RIOTOUSLY, (in an indictment). 2 Allen (Mass.) 150, 153.

Viperina est expositio quæ corrodit viscera textus (11 Co. 34): It is a poisonous exposition which destroys the vitals of the text.

Vir et uxor censentur in lege una persona (Jenk. Cent. 27): Husband and wife are considered one person in law.

Vir et uxor sunt quasi unica persona, quia caro et sanguis unus; res licet sit propria uxoris, vir tamen ejus custos, cum sit caput mulieris (Co. Litt. 112): Man and wife are, as it were, one person, because only one flesh and blood; although the property may be the wife's, the husband is keeper of it, since he is the head of the wife.

Vir militans Deo non implicetur secularibus negotiis (Co. Litt. 70): A man fighting for God must not be involved in secular business.

VIRGA.—A rod or ensign of office.—*Cowell.*

VIRGATE.—A yard-land.

VIRGE, TENANT BY.—A species of copyholder, who holds by the virge or rod.

VIRGO INTACTA.—A pure virgin.

VIRIDARIO ELIGENDO.—A writ for choice of a verderer in the forest.—*Reg. Orig.* 177.

VIRILIA.—The privy members of a man, to cut off which was felony by the common law, though the party consented to it.—*Bract.* l. 3, 144; *Cowell.*

VIRTUE, (of a female, defined). 48 Ga. 192, 290.

VIRTUE, BY, (not equivalent to "under color"). *Phill.* (N. C.) L. 380, 383.

VIRTUTE CUIUS.—This was the clause in a pleading justifying an entry upon land, by which the party alleged that it was in virtue of an order from one entitled that he entered.

VIRTUTE CUIUS, (in pleading). 1 Hill (N. Y.) 81; 4 Bing. 729, 744; 10 *Id.* 157; 1 *Ld.* Raym. 408, 412; 2 *Id.* 801; 1 *Saund.* 298 n.

VIRTUTE OFFICII.—By virtue of office. The opposite of *colore officii* (q. v.)

VIRTUTE OFFICII, (distinguished from "acts done *colore officii*"). 15 Johns. (N. Y.) 267; 4 N. Y. 173, 187.

VIS.—Any kind of force, violence or disturbance to person or property. It was a *vis armata*, i. e. *vis cum armis*, or *vis simplex*, i. e. *vis sine armis*. 1 Reeves Hist. Eng. Law c. vi., p. 322.

Vis legibus est inimica (3 Inst. 176): Violence is inimical to the laws.

VIS MAJOR is such a force as it is practically impossible to resist, e. g. a storm, earthquake, the acts of a large body of men, &c. The doctrine of *vis major* is, that a person is not liable for damage which he has been instrumental in producing, if it was directly caused by *vis major*. (*Nichols v. Marsland*, L. R. 10 Exch. 255; 2 Ex. D. 1; *Rylands v. Fletcher*, L. R. 3 H. L. 330; *Underh. Torts* 14.) "*Vis major*" is practically equivalent to the "act of God" (q. v.), the latter term being perhaps more used in the law of contracts. *See Poll. Cont.* (3 edit.) 381.

VISA.—A register; the authentication of a passport by a foreign authority.

VISCOUNT, or VICOOUNT.—An arbitrary title of honor, without any office pertaining to it, created by Hen. VI. (2 Inst. 5. *See Barr. Stat.* 409.) A peer of the fourth order, between earl and baron. 2 Steph. Com. (7 edit.) 604.

VISITATION—VISITOR.—

§ 1. **Ecclesiastical corporations.**—Ecclesiastical and eleemosynary corporations are visitable in England, or subject to visitation, i. e. the law has appointed proper persons (called "visitors") to visit, inquire into and correct all irregularities that arise in them. With regard to ecclesiastical corporations, the crown is the visitor of the archbishops, the archbishops of the bishops within their diocese, and the bishops are the visitors of all subordinate corporations, sole and aggregate. (1 Bl. Com. 480; 3 Steph. Com. 28; *Tud. Char. Trusts* 111 *et seq.*) Hence, when an archbishop or bishop makes a circuit through his district to inquire into matters of church discipline, this is called a "visitation." *Rog. Ecc. L.* 976; *Phillim. Ecc. L.* 1332.

§ 2. **Charities.**—As regards lay eleemosynary corporations, and other charities, the visitor is the founder, and his heirs, or a person appointed by him, or, in default of all of them, the crown. The visitors of a charity superintend its internal management, but not (as a rule) the management of its estates and revenue. *Com. Dig. Visitor*; *Phillim. Ecc. L.* 1984, 2006; *Wats. Comp. Eq.* 45.

§ 3. **Lunatics.**—Visitors of lunatics, in England, form a board of five members, whose duties are to visit periodically lunatics so found by inquisition, and to report to the lord chancellor on their condition and treatment. Their functions were, by 25 and 26 Vict. c. 86, extended to visiting and making inquiries as to persons alleged to be insane, in such cases as the lord chancellor may direct. (Second Rep. Leg. Dep. Comm. (1874) 63.) This provision is intended to apply to the case of lunatics whose property is of small value, and who have therefore not been found lunatic by inquisition. *Pope Lun.* 39. *See COMMISSIONER*, p. 236 n.

§ 4. **Poorhouse.**—Under Stat. 22 Geo. III. c. 83, the guardians of the poor for any parishes which have been united pursuant to that act, are directed to appoint, with the approbation of two justices, a person to act as visitor of the poorhouse. His duty is to superintend the poorhouse, and settle all questions relating to it. A single parish may also have a visitor. *See GUARDIANS OF THE POOR*; *OVERSEERS*.

As to visiting justices, *see PRISONS*.

VISITATION AND SEARCH.— *See SEARCH.*

VISITATION BOOKS OF HERALDS.—Compilations, when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, to register marriages and descents, which were verified to the heralds upon oath; they are allowed to be good evidence of pedigrees. 3 Steph. Com. (7 edit.) 335 n.

VISITATION OF ELEMOSYNARY CORPORATIONS, (an common law of England, as adopted in Massachusetts). 7 Pick. (Mass.) 303.

VISITOR, (included under "sojourner"). 8 Mod. 50.

VISITOR OF A CORPORATION, (office of). 1 Ll. Rayn. 8.

VISITOR OF MANNERS.—The ranger's office in the forest. 1 Manw. 195.

VISNE is an old name for a jury, because formerly the jurors were taken *de vicineto*, i. e. out of the neighborhood where the matters in question had taken place. Co. Litt. 125 a, 153 b.

VISUS.—View or inspection.—*Cowell*.

VITILITIGATE.—To litigate cavilously.

Vitium clerici nocere non debet (Jenk. Cent. 23): A clerical error ought not to hurt.

Vitium est quod fugi debet, nisi, rationem non invenias, mox legem sine ratione esse clames (Elles. Postn. 86): It is a fault which ought to be avoided, that if you cannot discover the reason, you should presently exclaim that the law is without reason.

VIVA PECUNIA.—Cattle which obtained this name from being received during the Saxon period as money upon most occasions, at certain regulated prices.—*Cowell*.

VIVA VOCE.—See EVIDENCE, § 7; EXAMINATION.

VIVARY.—OLD FRENCH: *viver, vivier*; LOW LATIN: *vivarium*, a place for keeping live animals of any kind.

Vivary "signifieth fish-ponds or waters where-in fish are kept or nourished." (2 Inst. 199.) "If a man buy divers fishes, as carps, breames, tenches, &c., and put them in his pond, and dyeth [intestate], in this case the heire shall have them, and not the executors, but they shall goe with the inheritance, because they were at libertie, and could not be gotten without industrie, as by nets, and other engines. Otherwise it is, if they were in a trunke or the like" (Co. Litt. 8 a), for in that case they go to the executors. A man has a qualified property in fish confined in a small pond, tank, or stew so that they can be caught at pleasure, and they may therefore be the subject of larceny. (Coults. & F. Waters 370.) "Vivary" seems to mean a place of this kind.—*Spel. Gloss. s. v.* See ANIMALS, § 2; FISHERY.

VIVUM VADIUM VIFGAGE, or **LIVING PLEDGE**.—When a person borrows money of another, and grants to him an estate to hold till the rents and profits shall repay the sum borrowed, with interest. The estate is conditioned to be void as soon as the sum is realized. See WELSH MORTGAGE.

Vix ulla lex fieri potest quæ omnibus commoda sit sed si majori parti

prospiciat utilis est (Plowd. 369): Scarcely any law can be made which is beneficial to all; but it is useful if it benefit the greater majority.

Viz, (in a declaration). Cro. Jac. 96, 97.

— (in pleading). Gould Pl. § 35.

— (in an indenture). 2 Lev. 99.

— (in a release). 5 Com. Dig. 337.

— (in a will). 1 Bro. Ch. 261.

VOCABULUM ARTIS.—A word of art.

VOCATIO IN JUS.—In the civil law, a citation to law.

VOID.—

§ 1. In the proper sense of the word, an agreement or other act is said to be void when it has no legal effect, or not the legal effect which it was intended to produce. Thus, an agreement which is void on account of its being made for an immoral consideration cannot be enforced. (Leake Cont. (2 edit.) 760. See UNLAWFUL.) But an instrument which is void may subject the parties to penal consequences. Thus, an agreement amounting to a conspiracy would be admissible as evidence in criminal proceedings.

§ 2. **Void ab initio**.—An act may be void either *ab initio* or *ex post facto*. (Pigot's Case, 11 Co. 27.) Thus, if a contract is made without the true consent of the parties, or for an immoral consideration, or in fraud of third persons, or by an infant (unless for necessities), it is void *ab initio*. No person's rights can be affected by it, whether he be a party or a stranger. (Poll. Cont. 7.) In the case of a contract which is void for illegality, immorality, or on a similar ground, if money has been paid as the consideration of its performance, the party who has paid it may repudiate the contract and recover it back at any time before performance. But when an unlawful contract has been executed, money paid either in consideration or performance of the contract cannot be recovered back, for *in pari delicto melior est conditio possidentis*. Leake Cont. 772.

§ 3. **Void ex post facto**.—If a contract or deed is properly entered into, and is afterwards altered in a material point by the fraud or laches of either party, it becomes void *ex post facto* as against him, so that he cannot enforce or take advantage of it. (Master v. Miller, 4 T. R. 820; 1

Sm. Lead. Cas.; Leake Cont. 805.) Another example of a transaction becoming void *ex post facto* occurs in the case of a transaction which was originally voidable, and has been avoided by the election of the party or otherwise. *See* AVOID; VOIDABLE.

§ 4. **Effect of estoppel.**—A peculiar kind of void transaction is one the validity of which one of the parties is, as against the other, estopped from denying. Thus, if A. by fraud induces B. to sign a contract for the sale of land, while he thinks he is signing one for the purchase of goods, the contract is void as against B., but he can, nevertheless, enforce it against A., because A. is estopped from setting up his own fraud as a defense.

Such a contract is said to be void as against third persons, and voidable as between the parties. *Foster v. Mackinnon*, L. R. 4 C. P. 704; Poll. Cont. (3 edit.) 463. *See* ESTOPPEL; MISTAKE, § 6; VOIDABLE, § 2.

§ 5. **Void—Void ab initio.**—"Void" is frequently used in the sense of "void *ab initio*," as opposed to "voidable" (*q. v.*) It would be convenient to express "void *ab initio*" by "void," and "void *ex post facto*" by "avoided."

VOID, (defined). 36 Iowa 201; 44 Pa. St. 9. (when means "voidable"). Wilberf. Stat. L. 211, 212; 1 Nev. & M. 443.

— (distinguished from "voidable"). 42 Ala. 462; 7 Mass. 399, 429; 13 *Id.* 239; 14 *Id.* 457, 461; 2 Pick. (Mass.) 191, n.; 5 *Id.* 217; 6 Metc. (Mass.) 415; 50 Mo. 284, 287; 2 Edw. (N. Y.) 289; 1 Johns. (N. Y.) Cas. 127; 15 Wend. (N. Y.) 64; 6 Wis. 645; 40 *Id.* 131; 19 Am. Dec. 71; 2 Salk. 674.

— (in a statute). 28 Vt. 150.
— (in a statute authorizing the sale of infants' lands). 1 Duv. (Ky.) 352.

— (in act concerning conveyances). 18 Johns. (N. Y.) 515, 528.

— (acts of infant, when). 15 Wend. (N. Y.) 631.

— (deed of lands by an infant is not). 1 Hill (N. Y.) 121.

— (negotiable note given by an infant is). 10 Johns. (N. Y.) 33.

— (execution issued upon judgment after death of defendant is not). 4 Watts (Pa.) 367.

— (*f. fu.* tested out of term is not). Cox (N. J.) 111.

VOID, ABSOLUTELY, RELATIVELY, (defined). 69 Pa. St. 81.

VOIDABLE.—

§ 1. An agreement or other act is said to be voidable when either of the parties is

entitled to rescind it, while, until that happens, it has the legal effects which it was intended to have. (*See* RESCIND: AVOID.) It can, however, be disputed only by certain persons and under certain conditions, and the right of rescission may be abandoned by the party entitled to exercise it. *See* ADOPT; RATIFICATION.

§ 2. If third persons acquire rights under a voidable contract or other transaction, without notice and for value, they cannot afterwards be put in a worse position by its being set aside. (Leake Cont. (2 edit.) 388; Poll. Cont. (3 edit.) 7.) Herein a voidable contract differs from a void contract, the nullity of which one of the parties is estopped from asserting (*see* VOID, § 4,) for in the latter case no third person can acquire rights under the contract unless the party against whom it is void elects to affirm it. *Foster v. Mackinnon*, L. R. 4 C. P. 704; Poll. Cont. 463.

§ 3. The principal examples of voidable transactions occur in the case of fraud (*q. v.*), collateral mistake (*see* MISTAKE, § 8 *et seq.*), and lunacy (*see* LUNATIC, § 2). As to the contracts of infants, *see* INFANT

VOIDABLE, (defined). 44 Pa. St. 9.
— (distinguished from "void"). 2 Edw. (N. Y.) 289.

— (equivalent to "null and void") 4 Barn. & Ald. 401, 406.

— (not equivalent to "null and void"). 2 Ad. & E. 84.

— (when contracts of infants are). 7 Cow. (N. Y.) 179.

— (lease to an infant is). Cro. Jac. 320.

VOIDANCE.—The act of emptying; ejection from a benefice.

VOIRE DIRE, in procedure, is a sort of preliminary examination of a juror or a witness, in which he is required to *swear the truth* with respect to the questions put to him. If his incompetency appears from this examination or from extrinsic evidence, *e. g.* on the ground that he is not of sound mind, he is rejected. (Best. Ev. 190; Rosc. Cr. Ev. 140.) *Voire* is Norman-French for "true" or "truly." Littré Dict. v. *Voire*.

VOITURE.—Carriage; transportation by carriage.

Volenti non fit injuria: No injury can be done to a willing person.

If a person voluntarily consents to an injury, he must bear the loss. *See* SEDUCTION, for an

Illustration of the maxim; also, 1 Johns. (N. Y.) h. 186.

VOLUMUS.—The first word of a clause in the royal writs of protection and letters-patent.

VOLUNTARILY, (defined). 1 Moo. & S. 151.

— (in a statute). 1 Moo. & Rob. 189.

— (in bankrupt law). L. R. 7 Ch. App. 27.

VOLUNTARIUS DÆMON.—A drunkard. Co. Litt. 247 a.

VOLUNTARY.—

§ 1. A conveyance, settlement, gift or similar transaction is said to be voluntary when there is no valuable consideration for it. See CONSIDERATION.

§ 2. As a general rule a voluntary gift, conveyance or other executed transaction is valid as between the parties, and so is a voluntary contract, if under seal (see CONSIDERATION, § 2; CONTRACTS, § 9); but this rule is subject to exceptions, principally in favor of the creditors of the person bound by the transaction. Thus, in the administration of the estate of a deceased person, his voluntary bonds and covenants are postponed to his other debts and obligations. (Not so in bankruptcy. See *Ex parte* Pottinger, 8 Ch. D. 621.) (See ADMINISTRATION, § 2.) As to voluntary settlements, see SETTLEMENT, § 6 *et seq.* The court will not enforce specific performance of a voluntary covenant. *Kekewich v. Manning*, 1 De G. M. & G. 176; Poll. Cont. 201.

§ 3. By the act 27 Eliz. c. 4, a voluntary conveyance of lands or hereditaments is void against a subsequent purchaser for good consideration, even though he has notice of the prior voluntary conveyance. 2 Bl. Com. 296, n. (4); Wats. Comp. Eq. 275; 1 White & T. Lead. Cas. 223. See FRAUDULENT CONVEYANCES.

§ 4. In equity it is a rule that in every case where one person obtains, by voluntary donation (gift, settlement, contract, &c.), a large pecuniary benefit from another, he is bound to show that the donor understood what he was doing, and that if he cannot the donation may be set aside at the instance of the donor or his representatives. *Hoghton v. Hoghton*, 15 Beav. 275; 2 White & T. Lead. Cas. 580; Poll. Cont. (3 edit.) 574; *Bainbrigg v. Browne*, 18 Ch. D. 188. See RESCISSION.

§ 5. It is also a rule of equity that although no consideration is required for the validity of a complete declaration of trust, or a complete transfer of any legal or equitable interest in property, yet an incomplete voluntary gift creates no right which can be enforced. Thus, where a person possessed of a leasehold house and stock in trade purported to make a voluntary gift in favor of his grandson E. by indorsing and signing the following memorandum on the lease, "This deed and all thereto belonging I give to E. from this time forth, with all the stock in trade;" and by delivering the lease to E.'s mother on his behalf, it was held that there was no valid declaration of trust in favor of E. *Richards v. Delbridge*, L. R. 18 Eq. 11; *Jefferys v. Jefferys*, Cr. & Ph. 138; Poll. Cont. 202. See OATHS, § 2; WASTE; WINDING-UP.

VOLUNTARY, (in bankrupt law). 4 T. R. 193.

— (in pleading an escape). 1 Saund. 34 n.

— (payment by surety before maturity of debt, is not necessarily). 5 Rawle (Pa.) 91.

— (when necessary in an indictment for perjury). 1 Cro. 147.

VOLUNTARY ANSWER.—One which was filed by a defendant to a bill in equity, without being called upon to answer by the plaintiff.

VOLUNTARY ASSIGNMENT, (in act of congress creating priorities in favor of the United States). 3 Sumn. (U. S.) 345; 10 Paige (N. Y.) 445.

VOLUNTARY CONFESSION.—

See CONFESSION, § 3.

VOLUNTARY CONFESSION, (what is not). 57 Barb. (N. Y.) 353, 363.

VOLUNTARY CONVEYANCE, (defined). 8 Cow. (N. Y.) 400, 430.

— (what is not). 8 Bing. 87.

— (in a statute). 1 Fomb. Eq. 272 n.

— (when not void as against creditors). 6 Paige (N. Y.) 62.

VOLUNTARY DEED, (distinguished from a "fraudulent deed"). 1 Mod. 119.

VOLUNTARY DEPOSIT.—Such as arises from the mere consent and agreement of the parties. Story Bailm. 47.

VOLUNTARY DESERTION, (what is not). 9 Johns. (N. Y.) 138.

VOLUNTARY ESCAPE.—See ESCAPE, § 2.

VOLUNTARY JURISDICTION.—In the Scotch law, one exercised in matters admitting of no opposition or question, and therefore cognizable by any judge and in any place, and on any lawful day.—*Bell Dict.*

VOLUNTARY MANSLAUGHTER.—See HOMICIDE, § 1.

VOLUNTARY NONSUIT.—See NONSUIT.

VOLUNTARY OATH.—An oath administered in a case for which the law has not provided. See 5 and 6 Will. IV. c. 62; 4 Broom & H. Com. 154; 4 Steph. Com. (7 edit.) 244. See OATH.

VOLUNTARY PAYMENT, (what is). 7 Otto (U. S.) 181.

— (what is not). 9 Bing. 717; 1 Dowl. P. C. 28.

— (by an infant on a contract). 33 Conn. 204; 56 Me. 102; 5 N. H. 343; 17 Barb. (N. Y.) 428; 8 Cow. (N. Y.) 84; 7 Hill (N. Y.) 110; 83 (N. Y.) 245; 19 Wend. (N. Y.) 301; 10 Bing. 252; 8 DeG. M. & G. 254; 2 Eden 60; 8 Taunt. 508.

VOLUNTARY REDEMPTION.—In the Scotch law, this takes place when a mortgagee receives the sum due into his own hands, and discharges the mortgage, without any consignation.—*Bell Dict.*

VOLUNTARY SEPARATION, (in divorce act). 55 Ala. 428.

VOLUNTARY WASTE.—That which is the result of the voluntary act of the tenant of property, as where he pulls down a wall, or cuts timber; opposed to permissive waste (*q. v.*) 1 Steph. Com. (7 edit.) 257, 290, 293; 3 *Id.* 405. See WASTE.

VOLUNTARY WASTE, (defined). Com. L. & T. 189.

Voluntas donatoris in charta doni sui manifeste expressa observetur (Co. Litt. 21): The will of the donor manifestly expressed in his deed of gift is to be observed.

Voluntas est justa sententia de eo quod quis post mortem suam fieri velit: A will is an exact opinion or determination concerning that which each one wishes to be done after his death.

Voluntas facit quod in testamento scriptum valeat (D. 30, 1, 12, § 3): It is intention which gives effect to the wording of a will.

Voluntas in delictis, non exitus spectatur (2 Inst. 57): In crimes, the will, and not the consequence, is looked to.

Voluntas reputatur pro facto (3 Inst. 69): The intention is to be taken for the deed. A maxim which can be applied (if at all) with only the greatest care in English and American law, the nearest approach to any application of it having been under the cognate maxim *scribere est agere* in the case of an alleged treason. But, in law, a man is always deemed to have intended that which is the *natural consequence* of his act; and the intention may even be inferred from the overt act, and that is probably the true meaning of this maxim. Certainly the maxim does not mean (nor does the law hold) that the mere intention to do a criminal act, not being accompanied with any accomplishment thereof, or step towards, *i. e.* overt act of, accomplishment, is punishable at all.

Voluntas testatoris est ambulatoria usque ad extremum vite exitum (4 Co. 61): The will of a testator is ambulatory until the latest moment of life.

Voluntas testatoris habet interpretationem latam et benignam (Jenk. Cent. 260): The intention of a testator has a broad and benignant interpretation.

Voluntas ultima testatoris est perimplenda secundum veram intentionem suam (Co. Litt. 322): The last will of the testator is to be fulfilled according to his true intention.

VOLUNTEER.—This word is used in law in two senses.

§ 1. **Contracts and torts.**—A person who gives his services without any express or implied promise of remuneration in return is called a "volunteer," and is entitled to no remuneration for his services, nor to any compensation for injuries sustained by him in performing what he has undertaken. But a person who, though he is not obliged to do an act, yet has an interest in doing it, is not necessarily a volunteer. Thus, where the owner of goods assisted the servants of a railway company, with the assent of the company, in delivering them, and was injured by the servants' negligence, it was held that he was entitled to damages. *Wright v. L. & N. W. Rail. Co.*, 1 Q. B. D. 252.

§ 2. **Settlements and wills.**—In the law of settlements and wills, a volunteer is a person who is merely an object of bounty, as opposed to a person who takes an interest for valuable consideration. (2 Spenc. Eq. Jur. 285 *et seq.*) Thus, an ordinary devisee or legatee is a volunteer; and if an appointment be made under a general power, without consideration, the

appointee is a volunteer. (Wats. Comp. Eq. 293.) So, in the case of a settlement or conveyance void under the Stat. 27 E.iz. c. 4, which makes voluntary conveyances of land void as against subsequent purchasers for value, the person on whom the voluntary settlement is made is called a "volunteer." 1 White and T. Lead. Cas. 223; Price v. Jenkins, 4 Ch. D. 483, overruled on appeal, 5 Ch. D. 619. See VOLUNTARY, § 3.

VOLUNTEER, (a substitute is). 43 Barb. (N. Y.) 239.
 — (a substitute is not). 25 Mich. 340.

VOTE.—Suffrage; voice given. See BALLOT.

VOTE, (by proxy, an alien stockholder cannot). 6 Wend. (N. Y.) 509.
 VOTED, (in a statute). 60 Me. 453.

VOTER.—One who has the right of giving his voice or suffrage.

VOTERS OF THE COUNTY, (in the constitution). 5 Wis. 308.

VOTERS OF THE COUNTY, A MAJORITY OF THE, (in a statute). 1 Sneed (Tenn.) 637.

VOTING, (synonymous with "giving in a vote"). 3 Dutch. (N. J.) 105.

VOTING PAPER, (in stamp act). L. R. 7 Q. B. 463.

VOTUM.—A vow or promise. *Dies votorum*, the wedding day.—*Fleta* 1, 4.

VOUCH—VOUCHER.—NORMAN-FRENCH: *voucher*, (Britt. 235 a.) from LATIN: *vocare*, to call.

§ 1. To vouch is to call upon, rely on, or quote as an authority. Thus, in the old writers, to vouch a case or report is to quote it as an authority. Co. Litt. 70 a.

§ 2. Hence, a "voucher" is a document which evidences a transaction, especially a receipt for the payment of money. In the practice of the English Chancery Division, when an account is being taken in chambers, the accounting party has to produce vouchers for all payments of £2 or over claimed to have been made by him. This is called "vouching the account."

§ 3. Voucher to warranty.—In the old law of real property, voucher (or "voucher to warranty") was where a person who was being sued for the recovery of land held by him called into court the person who had warranted the land to him, and required him either to defend the title against the demandant or to yield him land of equal value; the person thus called into

court was called the "vouchee." Double voucher was where the vouchee vouched the person who had warranted the land to him; and so with treble voucher, &c. A foreign voucher was where the vouchee was a foreigner, i. e. a person out of the jurisdiction of the court in which the action was brought. (Co. Litt. 101 b.) In the fictitious proceedings called "common recoveries," the vouchee (or ultimate vouchee if there were more than one) was usually the crier of the court, who was hence called the "common vouchee." 2 Bl. Com. 359. See PRÆCIPUE, § 3; RECOVERY, § 7.

§ 4 Real actions having been generally abolished (Stat. 3 and 4 Will. IV. c. 27, § 36), the proceeding by voucher no longer exists in most jurisdictions. See WARRANTY, § 6 *et seq.*; WARRANTIA CHARTÆ.

VOUCH, (who may, to a writ of entry). 2 Saund. 32 n.

VOUCHEE.—The person vouched in a writ of right.

VOUCHER, (defined). 1 Metc. (Mass.) 216, 218; 3 Halst. (N. J.) 299.

Vox emissa volat, litera scripta manet: Word of mouth flies away, things written remain.

The effect of a written contract cannot be varied in its terms by parol evidence.

VOYAGE, (defined). 113 Mass. 326; 1 Am. L. J. 214.

— (applied to vessels engaged in commerce is inapplicable to a tug). 2 Abb. (U. S.) 172.

VOYAGE OR VOYAGES, (charter of vessel for). 6 Otto (U. S.) 162.

VOYAGE POLICY.—See POLICY OF INSURANCE, § 3.

VRAIC.—Seaweed. It is used in great quantities by the inhabitants of Jersey and Guernsey for manure, and also for fuel by the poorer classes. In *Benest v. Pipon*, on appeal from Jersey to the Privy Council, it was ruled that the lord of a manor cannot establish a claim to the exclusive right of cutting seaweed on rocks situate below low-water mark, except by a grant from the crown, or by such long and undisturbed enjoyment of it as to give him a title by prescription. 1 Knapp 60, A. p. 1829.

Vulgaris opinio est duplex, viz., orta inter graves et discretos, quæ multum veritatis habet, et opinio orta inter leves et vulgares homines absque specie veritatis (4 c. 107): Common opinion is of two kinds, viz., that which arises among grave and discreet men, which has much truth in it, and that which arises among light and common men, without any appearance of truth.

VULGARIS PURGATIO.—*Judicium Dei* (q. v.)

W.

WADSET.—A kind of mortgage in Scotland. The lender is called the "wad-etter," and the borrower the "reverser."—*Bell Dict.*

WADSETTER.—A mortgagee. *See* WADSET.

WAFORS.—Conductors of vessels at sea.—*Cowell.*

WAGE.—The giving of a security for the performance of anything.

WAGER.

§ 1. A wager consists of mutual promises between two persons that one will pay the other a certain sum of money if a certain event happens or is ascertained to have happened. At common law, a wager constituted a good contract, unless it was contrary to public policy, morality or the like, (*Chit. Cont.* 468); but by statute in England, and most, if not all, of the States, all contracts by way of gaming or wagering are null and void (*Id.* 470), except so far as concerns subscriptions or contributions for prizes or money to be awarded to the winner of any lawful game, sport, pastime or exercise. (*See Diggle v. Higgs*, 2 Ex. D. 422; *Trimble v. Hill*, 5 App. Cas. 342.) There is nothing illegal in a wager: it is merely not enforceable. *Poll. Cont.* (3 edit.) 276. *See* UNLAWFUL.

§ 2. **Gambling in stocks.**—Numerous questions have arisen as to the lawfulness of speculative transactions on the Stock Exchange, especially as regards "time-bargains" and "differences." A time-bargain is in form a contract to buy or sell shares or other securities, with an agreement (contemporaneous or subsequent) that the sale shall not be really carried out by delivery of the securities, but that one party shall pay to the other the difference between the market price of the security on the day when the contract was made and the day fixed for its performance. It is, therefore, a wager on the price of the security. The term "difference" is generally applied to the case where a person employs a broker to buy or sell stock for him on the understanding that when the day for completing the transaction arrives, the broker shall resell or rebuy the stock,

and that the employer shall take the profit or bear the loss. A time-bargain is void as between the parties to it, (*Grisewood v. Blane*, 11 Com. B. 526, 538; *Mels. & L. Stock Exch.* 21, where the nature of "options," "puts" and "calls" is explained,) but if a broker is employed to speculate in stocks, he can recover from his employer brokerage and "differences" in respect of all genuine contracts for buying and selling stock which he enters into with other persons. *Thacker v. Hardy*, 4 Q. B. D. 685; *Ex parte Rogers*, 15 Ch. D. 207.

§ 3. **Betting-houses.**—By numerous statutes from 38 Hen. VIII. to the present time, persons who keep gambling or betting-houses, or otherwise publicly offer facilities for gambling or betting, are made liable to various penalties and punishments.

WAGER, (defined). 75 Ill. 554; 18 Ind. 18; 44 How. (N. Y.) Pr. 206, 207; 81 N. Y. 539.

— (what constitutes). 11 Ala. 543; 1 Bosw. (N. Y.) 207; 24 Ohio St. 323; 75 Pa. St. 166; 5 Humph. (Tenn.) 561.

— (what is not). 7 Iowa 17.
— (when illegal). 11 Ind. 14; 1 Bailey (S. C.) 486; 1 Nott & M. (S. C.) 180; *Cowp.* 729; 1 T. R. 56; 2 *Id.* 610.

— (when not illegal). 10 Johns. (N. Y.) 406; *Cowp.* 37; 8 Wheel. Am. C. L. 339; 3 T. R. 693, 697.

— (when may be recovered). 9 Cow. (N. Y.) 169; 2 Murph. (N. C.) 26.

— (when cannot be recovered from the stakeholder). 12 Johns. (N. Y.) 1; 4 *Id.* 426; 11 *Id.* 23.

— (when a court will not give relief from). 8 Johns. (N. Y.) 147.

— (check given for). 12 Johns. (N. Y.) 376.

— (note given for, is void). 8 Johns. (N. Y.) 454.

WAGER CONTRACT, (defined). 7 Johns. (N. Y.) 434.

WAGER, FEIGNED ISSUE ON A
—*See* FEIGNED ISSUE.

WAGER OF BATTEL.—*See* BATTEL.

WAGER OF LAW.—A proceeding which consisted in a defendant's discharging himself from the claim, on his own oath, bringing with him, at the same time, into court, eleven of his neighbors (*compurgatores*) to swear that they believed his denial to be true. It was abolished by 3 and 4 Will. IV. c. 42, § 13. *See* 3 Steph. Com. (7 edit.) 425, 513, n.; 4 *Id.* 490; 3 Bl. Com. 341.

WAGER OF LAW, (when allowed). 3 Bl. Com. 347.

WAGERING POLICIES.—Those effected for gambling purposes, which are void. *See* DOUBLE INSURANCE.

WAGERING POLICY, (what is). 2 Mass. 1, 7.

WAGES.—

§ 1. Wages are money payable by a master to his servant in respect of services. *See* MASTER AND SERVANT; SERVICE, § 7.

§ 2. Bankruptcy.—Some wages are preferential debts in bankruptcy and insolvency, (*see* DEBT, § 12,) and in the liquidation of a mining company under the English Stannaries Act, 1869. Buckley Comp. 281.

§ 3. Seamen's wages.—With reference to seamen's wages, the general rule used to be "freight is the mother of wages," so that if no freight was received no wages were payable; but this rule has been abolished, in England, by the Merchant Shipping Act, 1854, § 183. (Maude & P. Mer. Sh. (4 edit.) 219.) Seamen have a lien on the ship and freight for their wages. Claims to wages may be enforced by action *in rem* or *in personam*. (*See* ACTION, §§ 12, 13.) County courts and justices of the peace have jurisdiction in claims for wages up to a certain amount, and may enforce them by distress and sale of the vessel. The wages of a master are now on the same footing as those of ordinary seamen. *Id.* 122, 239 *et seq.*

WAGES, (what are not). 54 Ga. 399.

—(distinguished from "earnings"). 102 Mass. 236; 115 *Id.* 167.

—(distinguished from "fees and salaries"). 10 Ind. 83.

—(in a statute). 49 Ala. 115, 118.

WAGES OF THE WIFE'S PERSONAL LABOR, (in Iowa Code, § 2211). 42 Iowa 288.

WAGESSUM.—A doubtful word, perhaps Mussel Ouze. *See* *Re Alston's Estate*, 5 W. R. 189.

WAGGONAGE.—Money paid for carriage in a wagon.

WAGON, ("carriage" includes). 19 Johns. (N. Y.) 444.

—(in a statute). 5 Cal. 418; 7 Kan. 320.

WAGGON OR CART ROAD, (reservation of, in conveyance). 4 Q. B. D. 412.

WAGON WORK, (in a note). 19 Ind. 24.

WAIFS (*bona waviata*).—Stolen goods which are waived or thrown away by the

thief in his flight, for fear of being apprehended. They belong to the owner, if he follows and apprehends the thief or prosecutes him to conviction; otherwise they belong to the sovereign. 1 Bl. Com. 297; 2 Steph. Com. 547. *See* FRANCHISE, § 2, PREROGATIVE.

WAIFS, (defined). Chit. Prerog. 146.

WAIN BOTE.—Timber for wagons or carts.

WAINABLE.—Land that may be ploughed, manured, or tilled.—*Chart Antiq.*

WAINAGIUM, or WONOGIUM.—The countenance of a villein; that which is necessary for the cultivation of land. Barr. Stat. 12; 4 Steph. Com. (7 edit.) 446 *n.* *See* CONTENTEMENT.

WAITING CLERKS.—Officers whose duty it formerly was to wait in attendance upon the Court of Chancery. The office was abolished in 1842 by Stat. 5 and 6 Vict. ch. 103. Mozley and W.

WAIVE—WAIVER.—

§ 1. A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when he abandons the remedy which the law gives him for it. A waiver may be either express or implied. Thus, if a tenant commits a breach of covenant, and thereby makes the lease liable to forfeiture, the lessor may waive the breach either by promising not to take advantage of it, or by receiving rent after knowing of the breach; the former is an express, the latter an implied waiver. Formerly, if a lessor waived a right of re-entry for a breach of covenant, or the like, this operated as a waiver in law of all future breaches, so that the right of re-entry was destroyed. This rule was abolished in England by Stat. 22 and 23 Vict. c. 35. *See* APORPTION, § 4.

§ 2. "A man which is outlawed is called 'outlawed,' and a woman which is outlawed is called 'waived'" (Litt. § 183), "*waviata* and not *utlegata* or *exlex*, for that women are not sworn in leets or tornes, as men which be of the age of twelve yeares or more be; and therefore men may be called *utlegati*, *id est*, *extra legem positi*, but women are *waviata*, *id est*, *derelicta*, left out or not regarded, because they were not sworn to the law." Co. Litt. 122 b. *See* OUTLAW.

WAIVE, (stipulation by endorser of a note, to) 11 Wend. (N. Y.) 629.

WAIVER, (defined). 32 Conn. 21, 40; 44 *Id.* 72, 91.

WAIVING DEMAND AND NOTICE, (indorsed on a promissory note). 9 Gray (Mass.) 201.

WAKEMAN.—The chief magistrate of Ripon, in Yorkshire.—*Camden*.

WAKENING.—A citation narrating that a complainant has raised a summons which he had let sleep for a year and a day, concluding that all persons cited on the first should compare, hear, and see the aforesaid action called, awakened, and debated, till sentence be given.—*Bell Dict.*

WALES.—After Edward I. conquered Wales, the line of their ancient princes was abolished, and the king of England's eldest son was created their titular prince, and the territory of Wales was then entirely annexed to the British crown. The 27 Hen. VIII. c. 26, confirmed by 34 and 35 Hen. VIII. c. 36, gave the utmost advancement to their civil prosperity, by admitting them to a thorough communion of laws with the subjects of England. By 20 Geo. II. c. 42, it is declared that where England only is mentioned in any act of parliament, it shall be deemed to comprehend the dominion of Wales and town of Berwick-upon-Tweed. By 1 Will. IV. c. 70, the jurisdiction of the Court of Great Sessions was abolished, and assizes are now held there as in England. (See 5 and 6 Vict. c. 32.) By 8 and 9 Vict. c. 11, the manner of assigning sheriffs in Wales is regulated by and assimilated to that of England. (See 1 Steph. Com. (7 edit.) 84 *et seq.*) The 26 and 27 Vict. c. 82, empowers the bishops of Welsh dioceses to facilitate the making provision for English services in certain parishes in Wales.—*Wharton*.

WALESCHERY.—The being a Welshman.—*Spel. Gloss.*

WALISOUS.—A servant, or any other ministerial officer.—*Leg. Jud. c. 34*.

WALKERS.—Foresters who have the care of a certain space of ground assigned to them.—*Cowell*.

WALKING OUT OF LIMITS, (of prison, when not a forfeiture of debtor's bond). Penn. (N. J.) 776.

WALL-EYED, (spoken of a horse). Oliph. Hors. 106.

WAND OF PEACE.—In Scotch law, a wand carried by the messenger of a court, and which, when deforced (*i. e.* hindered from executing process), he breaks, as a symbol of the enforcement, and protest for remedy of law. (2 Forbes Inst. 207.)—*Burrill*.

WANDERING, (of animals, defined). 27 Wis. 425.

WANDERING, STRAYING, OR LYING, (in highway statute). L. R. 1 Q. B. 261.

WANLASS.—An ancient customary tenure of lands, *i. e.* to drive deer to a stand that the lord may have a shot. Blount Ten. 140.

WANT, (in a will). 34 Conn. 403, 405.

WANT OF CARE, (defined). 23 Ill. 380.

WANT OF MALE ISSUE AFTER HIM, (in a will). 19 Ves. 545, 547.

WANT OF REPAIR, (in highway). 13 Gray (Mass.) 59, 64.

WANT OF SUCH ISSUE, (in a will). Cowp. 797, 801; 6 East 336, 342; 2 P. Wms. 422.

WANTON, (not synonymous with "willful"). 23 Ind. 287.

WANTON AND CRUEL, (in act concerning divorce). 104 Mass. 195.

WANTON OR OBSCENE LANGUAGE, (in city ordinance). 46 Wis. 269.

WANTONNESS, (defined). 36 Conn. 182, 184; 75 Pa. St. 326.

WAPENTAKE, in the northern counties of England, is equivalent to a hundred (*q. v.*) 1 Bl. Com. 116.

WAR.—A contention by force; a fighting between two kings, princes or parties, in vindication of what they conceive to be their rights. The sovereign has the sole prerogative of making war or peace. 1 Broom & H. Com. 806.

WAR, (defined). 3 Wheel. Cr. Cas. 265.

— (what is). 51 Me. 465, 470.

— (congress has power to declare). 2 Am. L. J. 276.

— (in a statute). 1 Ct. of Cl. 233.

WAR, ARTICLES OF.—See ARTICLES OF WAR.

WAR, IMPERFECT, (defined). 2 Dall. (U. S.) 19, 21.

WAR, LEVYING AGAINST THE SOVEREIGN.—A species of treason. See TREASON, and 4 Steph. Com. (7 edit.) 157; 1 Broom & H. Com. 806.

WAR, PERFECT, (defined). 2 Dall. (U. S.) 19, 21.

WAR, PUBLIC, (what is). 4 Dall. (U. S.) 37, 40.

WARD—WARDSHIP.—

§ 1. A ward is an infant who is under the care of a guardian (*q. v.*) Wardship is the condition or status of a ward.

§ 2. **Ward of court**.—If an action, suit or other proceeding relative to an infant's estate or person, and for his benefit, be instituted in Chancery, the infant, whether plaintiff or defendant, immediately becomes a ward of court, although its father or testamentary guardian may be living. Thus, the institution of an action for the administration of property in which an infant is interested, or the pay-

ment into court of a fund in which he is interested, makes him a ward of court. Snell Eq. 323; Wats. Comp. Eq. 295; Dan. Ch. Pr. 1190.

§ 3. A ward of court cannot be taken out of the jurisdiction of the court, nor can any change be made in his or her position in life (as by marriage, adoption of a profession, &c.,) without leave of the court, and the details of his or her education and maintenance are regulated by the court.

§ 4. **Tenure.**—In the law of tenure, wardship is the right to the custody of the land, and in some cases also of the person, of an infant heir of land. The right is a chattel real. (Litt. § 320; Co. Litt. 200a.) As to its nature and varieties, see *GUARDIAN*.

WARD-HOLDING.—The ancient military tenure in Scotland. Abolished by 20 Geo. II. c. 50.

WARDA.—The custody of a town or castle; which the inhabitants were bound to keep at their own charge. Mon. Ang. t. i. 372.

WARDAGE.—Money paid and contributed to watch and ward.—*Domesd.*

WARDEN literally means a keeper; but generally the term is used, in England, to denote an officer of the crown. See *CINQUE PORTS*; *STANNARIES*.

WARDMOTE.—A court held in every ward in London.

The wardmote inquest has power to inquire into and present all defaults concerning the watch and police doing their duty, to see that engines, &c., are provided against fire, that persons selling ale and beer be honest and suffer no disorders, nor permit gaming, &c., that they sell in lawful measures; searches are to be made for beggars, vagrants and idle persons, &c., who shall be punished.—*Wharton*.

WARDPENNY.—Wardage (*q. v.*)

WARDS AND LIVERIES, COURT OF.—A court erected by Hen. III. and abolished by 12 Car. II. c. 24.

WARDSHIP IN CHIVALRY.—An incident to the tenure of knight-service.

WARDSHIP IN COPYHOLDS.—The lord is guardian of his infant tenant by special custom.

WARDSTAFF.—A watchman's staff.—*Cowell*.

WARDWIT.—The being quit of giving money for the keeping of wards.—*Spel. Gloss.*

WARECTARE.—To plough up land designed for wheat in the spring, in order to let it

lie fallow for better improvement, which in Kent is called "summer-land."

WAREHOUSE.—A place adapted to the reception and storage of goods and merchandise.

WAREHOUSE, (what is). 2 Moo. & R. 458.
— (in a penal statute). 12 Bush (Ky.) 397.

— (in relation to distress for rent). 22 Me. 47.

— ("repository" is equivalent to). Cro. Car. 554.

WAREHOUSE RECEIPT.—A receipt given by a warehouseman for goods received by him on storage in his warehouse. These receipts are *quasi*-negotiable, and the property in the goods stored will pass by indorsement of the warehouse receipt.

WAREHOUSEMAN.—One who receives goods and merchandise to be stored in his warehouse for hire.

WAREHOUSEMAN, (liability of). 9 Wend. (N. Y.) 60, 268.

WAREHOUSING SYSTEM.—The allowing of goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or if they are ultimately withdrawn for home consumption, without payment of such duties until they are so removed, or a purchaser found for them.

WARGUS.—A banished rogue. Leg. Hen. I. c. 83.

WARING, EX PARTE.—The case of *Ex parte Waring* (19 Ves. 345) was as follows: Bracken & Co. had an account with bankers named Brickwood, drawing upon them by bill, and lodging in their hands from time to time securities against their drafts. Brickwoods became bankrupt on the 7th July, 1810, being then liable on acceptances for Bracken & Co., to the amount of £24,000, and having in their hands a cash balance of £6,700, and securities worth a considerable sum. On the 2d August, 1810, Bracken & Co. also became bankrupt. Almost all the acceptances were proved against both estates, and the holders received dividends on Brickwoods' estate to the amount of £3,400. An application was then made by Waring and other holders of Brickwoods' acceptances, that the assignees of Brickwoods' estate might be ordered to pay to the petitioners and the other holders of the acceptances, the cash balance, less the dividends received by the petitioners (£6,700, less £3,400 = £3,300), and also the

proceeds of the securities held by Brickwoods, towards satisfaction of the amount due on the acceptances. An order to this effect was accordingly made, on the ground that the securities were applicable in clearing the estate of Brickwoods from the liability on the acceptances, and that therefore, to avoid circuitry, the securities should be given up to the holders of the acceptances; in other words, the securities held by the banker were made available to the bill holders, not directly, or as having a claim on the securities in respect of the acceptances by them, but through the equity (*i. e.* the equitable rights and obligations) between the banker and the customer.

The rule in *Ex parte Waring* only applies—(1) where there is a double insolvency, (*Hickie's Case*, L. R. 4 Eq. 226,) and (2) where there has been a specific appropriation of securities. *Ex parte Banner*, 2 Ch. D. 278. See *Fish. Mort.* 218.

WARNING, under the old practice of the English Court of Probate, was a notice given by a registrar of the principal registry to a person who had entered a caveat (*q. v.* § 2), warning him, within six days after service, to enter an appearance to the caveat in the principal registry and to set forth his interest, concluding with a notice that in default of his doing so the court would proceed to do all such acts, matters, and things as should be necessary. (*Browne Prob. Pr.* 266.) By the rules under the Judicature Acts, a writ of summons has been substituted for a warning. Rules of Court i. 1. See **APPEARANCE**.

WARNISTURA.—Garniture, furniture, provision, &c.—*Cowell*.

WARNOTH.—An ancient custom, that if any tenant holding of the castle of Dover failed in paying his rent at the day, he should forfeit double, and for his second failure treble; and the lands so held are called *terre culte et terre de warnoth*. 2 Mon. Ang. 589.

WARRANTICE.—In the Scotch law, warranty.

WARRANT.—

§ 1. In its primary sense, a warrant is an authority. See *Co. Litt.* 52a.

§ 2. **Letters patent**.—In England, every royal grant under the great seal is sealed by the lord chancellor under the authority of a warrant prepared by the attorney- or solicitor-general, setting forth the proposed letters patent, countersigned by one of the principal secretaries of state, and sealed with the privy seal. Stat. 14 and 15 Vict. c. 82; 1 Steph. Com. 619; Stat. 15 and 16 Vict. c. 83, § 15; *Johns. Pat.* 283. See **GREAT SEAL**; **PRIVY SEAL**; **SIGN MANUAL**.

As to warrants for the delivery of goods, see **DOCK WARRANT**; **DELIVERY ORDER**. As to share warrants, see **SHARE**, § 5. See, also, **WARRANT OF ATTORNEY**.

Warrants are used in executing process both in civil and criminal cases.

§ 3. **Bailiff's warrant**.—In ordinary actions, when a sheriff does not execute a writ either personally or by his undersheriff, he must authorize a bailiff or deputy to execute it, and this authority is given by a document called a "warrant." Sm. Ac. 251. See **BAILIFF**.

§ 4. **Warrant to bring up prisoner as witness**.—Stat. 16 and 17 Vict. c. 80, § 9, enables a secretary of state, or judge of any of the common law courts, to issue a warrant for bringing up any prisoner or person committed for trial, to be examined as a witness in any court. *Coe Pr.* 171. See **HABEAS CORPUS**, § 4.

§ 5. **Admiralty practice**.—Under the old practice of the English Admiralty Court, a warrant in a cause *in rem* answered to and was almost in the same words as the writ of summons in an admiralty action *in rem* under the new practice. *Wms. & B. Adm.* 191.

In criminal procedure, warrants authorizing the arrest or apprehension of persons charged with or suspected of having committed indictable offenses, are issued in the following cases:

§ 6. **Warrant to answer**.—A warrant to apprehend a person accused of an indictable offense may be issued by a justice of the peace or police justice, either in the first instance on a sworn information, or after a summons requiring the accused to appear and answer the charge has been served on him and disobeyed. This kind of warrant is sometimes called a "warrant to answer." *Stone Just.* 100.

§ 7. **Warrant to appear on indictment**.—A warrant may also be granted by a justice to apprehend a person who has been indicted of an offense, and is at large. *Arch. Cr. Pl.* 82; *Pritch. Quar. Sess.* 176. See **BACKING A WARRANT**.

§ 8. **Bench warrant**.—A bench warrant is a warrant issued by the court before which an indictment has been found, to arrest the accused and bring him before the court to find bail for his appearance at the trial. *Arch. Cr. Pl.* 83; *Pritch. Quar. Sess.* 178.

§ 9. **Warrant of deliverance**.—A warrant of deliverance is a warrant to discharge from prison a person who has been bailed. *Arch.* 90.

The following kinds of warrants are used in summary proceedings, before justices of the peace and other magistrates:

§ 10. **Warrant of distress**.—A warrant of distress is a warrant authorizing a

penalty or other sum of money to be levied by distress and sale of the defendant's goods. Stone Just. 193.

§ 11. **Warrant of Commitment.**—A warrant of commitment authorizes the commitment of the defendant to prison for a certain time, and is granted either (1) where the imprisonment is the punishment for the offense; or (2) after a return of *nulla bona* to a warrant of distress; or (3) in the first instance on default in paying a penalty or other sum of money Stone Just. 197 *et seq.*

WARRANT, (defined). 71 N. Y. 371, 376; Bell Cr. Cas. 159.

— (not necessary in a deed to create a general warranty). 3 McLean (U. S.) 144.

WARRANT AND DEFEND, (covenant to). 4 Wheel. Am. C. L. 43.

— (in a lease). 1 Com. B. 402.

WARRANT, AUTHORITY OR REQUEST FOR PAYMENT OF MONEY, (in statute punishing forgery). L. R. 1 C. C. R. 257.

WARRANT FOR THE DELIVERY OF GOODS, (a pawnbroker's ticket is). Bell Cr. Cas. 153, 159.

WARRANT OF ARREST, (without the magistrate's seal is void). 3 Yerg. (Tenn.) 392.

WARRANT OF ATTORNEY originally meant the same thing as a power or letter of attorney (Co. Litt. 52a), but at the present day the term is used only to denote a written authority from a person enabling the person to whom it is given (the attorney) to enter an appearance for him in an action, and to allow judgment to be entered for the plaintiff, or to suffer judgment to go by default. (Chit. Gen. Pr. 950; Arch. Pr. 762; Sm. Ac. 161; Stat. 32 and 33 Vict. c. 62, § 24.) Such a warrant is usually given to secure the payment of a sum of money, and is therefore qualified by a condition that it shall only be put in force if the debt is not paid by a certain day; this condition is expressed in a document called the "defeasance," which also usually contains various stipulations designed to facilitate the execution of the judgment when obtained. The defeasance must be written on the same paper or parchment as the warrant, and its execution requires to be attested by a solicitor, who must explain the nature of the document to the debtor before he signs it. (Co. Litt. 52a.) Warrants of attorney are not now of such frequent occurrence as formerly.

WARRANT OF ATTORNEY, (to confess judgment need not be under seal). 1 Chit. 707; 5 Taunt. 264.

WARRANT OF DISTRESS, (seal not required). Willes 412.

WARRANT OF LAW, (defined). 1 Hill (N. Y.) 170.

WARRANT, SHALL, (in a bond). 1 Dyer 429.

WARRANT THE WITHIN NOTE DUE AND COLLECTIBLE, I, (indorsed on promissory note). 3 Vt. 60.

WARRANT THIS NOTE GOOD, (indorsed by payee on note). 14 Wend. 231.

WARRANTED, (in a warranty of a horse). 1 Bing. 344; 8 Id. 48.

WARRANTED SOUND FOR ONE MONTH, (in sale of horse). L. R. 1 Q. B. 463.

WARRANTEE.—A person to whom a warranty is made.

WARRANTIA CHARTÆ.—A real action which formerly lay to enforce a warranty of title to land where the tenant was unable to avail himself of the warranty by voucher (*q. v.*) (3 Bl. Com. 300.) It was abolished by Stat. 3 and 4 Will. IV. c. 27, § 36. See **WARRANTY**, § 6.

WARRANTIA CHARTÆ, (in what actions it will lie). Hob. 63.

WARRANTIA DIEI.—See **DE WARRANTIA DIEI**.

WARRANTIES, (distinguished from "representations"). 31 Me. 219; 16 Am. Dec. 463 *n.*

Warrantizare est defendere et acquietare tenentem, qui warrantum vocavit, in seisinā sua; et tenens de re warranti excambium habebit ad valentiam (Co. Litt. 365): To warrant is to defend and insure in peace the tenant, who calls for warranty, in his seisin; and the tenant in warranty will have an exchange in proportion to its value.

Warranty of lands is abolished. 3 and 4 Will. IV. cc. 27, 74.

WARRANTOR.—A person who warrants; the heir of one's husband.

Warrantor potest excipere quod querens non tenet terram de qua petit warrantiam, et quod donum fuit insufficientis (Hob. 21): A warrantor may object, that the complainant does not hold the land of which he seeks the warranty, and that the gift was insufficient.

WARRANTS, ALL, (in a bond). 2 Saund. 414.

WARENTY.—

§ 1. A warranty is an engagement or undertaking forming part of a sale or other transaction. A warranty differs from a representation in giving rise to an absolute liability on the part of the warrantor,

whether made in good faith or not, and unless it is strictly and literally performed the contract is avoided, (Maude & P. Mer. Sh. 393; Sm. Merc. Law 369, 374; Steel v. State Line Steamship Co., 3 App. Cas. 86,) or he becomes liable to an action for breach of warranty, according to the nature of the transaction. See REPRESENTATION, §§ 3, 4.

§ 2. **On sale of goods—Warranty of title—of quality.**—In the law relating to sales of goods, a warranty is a collateral contract by a vendor on a sale of goods, that the goods have a certain quality or property. Warranty of title is an engagement by the vendor that he has a good title to the goods which he professes to sell. (Chit. Cont. 407; Benj. Sales 497.) Warranty of quality is an engagement by the vendor that the goods are of a good quality and fit for the purpose for which they are wanted, or that they are of a particular description. (Chit. Cont. 410; 1 Sm. Lead. Cas. 173.) Such a warranty may be either general or restricted to some particular point. Chit. Cont 417.

§ 3. Such warranties are usually express, *i. e.* created by appropriate words, though no particular form is required. Sometimes a warranty is implied. Thus, on a sale of goods, though the general rule is *caveat emptor*, a warranty of quality will be implied if the goods are made or supplied to the order of the purchaser, or if they are sold as answering a particular description, or by sample; or it may arise from a usage of trade. (Benj. Sales 525.) As regards implied warranty of title, the law is not quite settled, but the rule appears to be that "a sale of personal chattels implies an affirmation by the vendor that the chattel is his, and therefore he warrants the title, unless it be shown by the facts and circumstances of the sale that the vendor did not intend to assert ownership, but only to transfer such interest as he might have in the chattel sold." *Id.* 523.

§ 4. **Insurance.**—In the law of insurance, warranty means any assertion or undertaking on the part of the assured, whether expressed in the contract or capable of being annexed to it, on the strict and literal truth or performance of which the liability of the underwriter is

made to depend. (Maude & P. Mer. Sh. 377.) The most usual express warranties in time of peace are, that a ship is safe on a given day, and that she will sail or depart on a given day. In time of war it is also usual to warrant that the ship will sail with convoy, and that she and her cargo are neutral property and free from confiscation or seizure in the port of discharge. (*Id.* 378.) The most important implied warranty is that the vessel is seaworthy at the commencement of the risk. (*Id.* 387. See SEAWORTHY.) Warranty of documentation is a warranty that she has those documents which are required by international law or treaty to establish her national character. Sm. Merc. Law 381.

§ 5. **Continuing.**—A continuing warranty is one which applies to the whole period during which the contract is in force. Thus, an undertaking in a charter-party that a vessel shall continue to be of the same class that she was at the time the charter-party was made is a continuing warranty. See French v. Newgass, 3 C. P. D. 163.

§ 6. **Land.**—In the law of real property, warranty is an obligation by the feoffor or donor of land (or other hereditaments) to defend the feoffee or donee in the possession of the land, and to give him land of equal value if he is evicted from it. A warranty is a real covenant. (See COVENANT, § 3.) Warranties are either in deed, *i. e.* expressed, or in law, *i. e.* implied. Wms. Seis. 156; Shep. Touch. 181.

Warranties in deed were of three kinds—

§ 7. **Lineal warranty** was where the heir of the warrantor was or might by possibility have been entitled to the land by descent from the warrantor (Co. Litt. 370a); this happened if a man seized of land in fee made a feoffment of them by deed and bound himself and his heirs to warranty, and died, so that the warranty descended to his heir, who would otherwise have inherited the land. Litt. § 703.

§ 8. **Collateral warranty** was where the heir of the warrantor could not by any possibility have been entitled to the land by descent from the warrantor. Thus, if a younger son released with warranty to his father's disseisor, this warranty was collateral to his elder brother, because by

no possibility could the latter in such a case claim the land as heir to his younger brother. Litt. § 707.

§ 9. **Commencing by disseisin.**—Where the conveyance to which the warranty was annexed immediately followed a disseisin, or operated itself as such (as where a father, being tenant for years with remainder to his son in fee, aliened in fee-simple with warranty), this was called a "warranty commencing by disseisin," and did not bar the heir of the warrantor. 2 Bl. Com. 302. For an instance of a "warranty paramount," see *DERAIGN*, § 2.

§ 10. The operation of a warranty as against the heir of a warrantor, in case the warrantee was evicted from the land, was to compel him to yield the warrantee other lands in its stead, to the extent of any land which had descended to him from the ancestor (Co. Litt. 102a); and if he had no land by descent, then he was barred of all claim to the land warranted. This operation, however, was, from time to time, restrained by various statutes, (especially 6 Edw. I. c. 3; 11 Hen. VII. c. 20; 4 and 5 Ann. c. 16; 3 and 4 Will. IV. c. 27, § 39; *Id.* c. 74, § 14;) and voucher (*q. v.*), and the writ of *warrantia chartæ* (*q. v.*) have been abolished, (Stat. 3 and 4 Will. IV. c. 27, § 35;) so that a warranty of land seems to be now entirely inoperative in England. (2 Bl. Com. 303, *n.* 13.) A fictitious warranty was the foundation of the proceeding called a "common recovery" (*q. v.*), now also abolished. See *RECOVERY*, § 7.

§ 11. **Implied warranty.**—Warranty was implied in certain cases; thus, the word "give" in a feoffment created a warranty binding on the feoffor during his life; and an exchange at common law created an implied warranty, (see *EXCHANGE*, § 2;) these and all other implied warranties have been abolished. (Stat. 8 and 9 Vict. c. 106, § 3.) For other instances of implied warranties, see *Wms. Seis.* 101; Co. Litt. 102a, 384a, b. See *ASSETS*, § 4; *REBUTTER*, § 2.

WARRANTY, (defined). 66 Barb. (N. Y.) 169; 4 Hun (N. Y.) 783.

— (what is). 2 Pick. (Mass.) 214.

— (what is, a question for the jury). 13 Wend. (N. Y.) 277.

— (what is not). 39 Ind. 77; 2 Cai (N. Y.) 48; 2 Hall (N. Y.) 589; 3 N. Y. 122; 4 Wheel. Am. C. L. 52.

— (when will be implied). 10 Mass. 197; 18 Wend. (N. Y.) 449; 23 *Id.* 350; 3 Rawle (Pa.) 32, 37; 8 Wheel. Am. C. L. 347; 4 *Camph.* 145.

— (what words do not imply). 1 Murph. (N. C.) 343.

— (distinguished from "fraud"). 39 How. (N. Y.) Pr. 172.

— (distinguished from a "representation"). 1 Hill (N. Y.) 510.

— (in sale of chattels). 86 Ill. 127.

— (lineal and collateral, defined and distinguished). 4 Kent Com. 468.

WARRANTY, (what is a breach of). 2 Hen. & M. (Va.) 164.

— (measure of damages on breach of). 1 Bay (S. C.) 19, 265; 2 McCord (S. C.) 413, 414; 2 Treadw. (S. C.) 584; Cooke (Tenn.) 447; 1 Hen. & M. (Va.) 201; 2 Rand. (Va.) 132.

WARRANTY, COVENANT OF, (distinguished from a covenant for quiet enjoyment). 1 Aiken (Vt.) 233.

— (runs with the land). 10 Wend. (N. Y.) 180.

— (what is a breach). 1 Mass. 463; 10 *Id.* 267; 3 Serg. & R. (Pa.) 364.

— (what is not a breach). 3 Bibb (Ky.) 117; 8 Pick. (Mass.) 346.

— (declaration in an action upon). 10 Wheat. (U. S.) 449.

— (damages recoverable for breach of). 4 Dall (U. S.) 442; 3 Mass. 523, 544; 8 *Id.* 262, 263; 8 Pick. (Mass.) 455; Coxe (N. J.) 173; 2 Hair. (N. J.) 304; 21 Wend. (N. Y.) 120.

— (applies to the title). 5 Halst. (N. J.) 27.

— (*feme covert* cannot bind herself or heirs by). 3 Halst. (N. J.) 90.

WARRANTY DEED, FREE AND CLEAR FROM ALL INCUMBRANCES, (agreement to make). 3 Wheel. Am. C. L. 386.

WARRANTY, EXPRESS, (what constitutes). 20 Johns. (N. Y.) 196.

WARRANTY, GENERAL, (defined). 5 Conn. 517, 521.

WARRANTY, GENERAL AND QUALIFIED, (defined and distinguished). 4 Car. & P. 45.

WARRANTY OF NEUTRALITY, (in policy of insurance). 2 Johns. (N. Y.) Cas. 127, 148.

WARREN.—*NORMAN-FRENCH: garenne; LOW LATIN: warrenna; from Old High German, waron, to take care of, preserve ("place defendue et garenne").* Britt. 85a; *Littre, s. v. Garenne; Schmidtheimer's Dict. s. v. Warren.*

§ 1. Warren is the privilege of keeping and killing certain kinds of animals (especially hares and rabbits) on a piece of ground. As to what are beasts of warren, see *GAME*. A warren in the hands of a private person (sometimes called a "free warren") is a franchise (*q. v.*); it may be claimed either by royal grant or prescription, and may exist either in the lands of the owner of the warren, or in those of another person. (Com. Dig. *Chuse D.*; Co. Litt. 233a.) As to whether a conveyance of a "warren" passes the soil, see Co. Litt. 5 b; *Earl Beauchamp v. Winn*, L. R. 6 II. L. 223.

§ 2. The owner of a warren has a qualified property in the animals belonging to it, so that no other person can acquire a property in them either by taking them within the warren, or by chasing them thence and taking them on other ground. See *ANIMALS*, § 2; *FOREST*, § 3; *GAME*.

WARREN, FREE, (defined). Chit. Prerog. 141.

WARSCOTT.—A contribution usually made towards armor in the time of the Saxons.

WARTH.—A customary payment for castle-guard.—*Cowell.*

WARTS, (on a horse, what are). Oliph. Hora. 106.

WASH.—A shallow part of a river or arm of the sea.

WASHING-HORN.—The sounding of a horn for washing before dinner. The custom is still observed in the Temple.

WASHINGTON, TREATY OF.—

A treaty signed on May 8th, 1871, between Great Britain and the United States of America, with reference to certain differences arising out of the war between the Northern and Southern States of the Union, the Canadian Fisheries, and other matters.

WASTE.—**NORMAN-FRENCH:** *wast* (Britt. 168); from Latin, *vastare, vastus*. Litre, *s. v. Gater*.

§ 1. **Waste Land.**—In the English law of real property, waste is, properly speaking, land which has never been cultivated, as opposed to pasture and arable land, &c. The most important kind of waste is manorial waste, or that part of a manor which is subject to the tenants' rights of common, and hence "waste" is sometimes used improperly to denote any land subject to rights of common or similar rights, although under cultivation. (Elt. Comm. 188; Cooke Incl. 42; Fleta 265; 7 Co. 5.) (See COMMON; COMMONABLE; LAMMAS LANDS; MANOR; OPEN FIELDS; SHACK.) The soil of a manorial waste is vested in the lord of the manor, and he therefore is entitled to pasture his cattle on it. He is also entitled to the minerals under the waste, and may work them so that he do not unduly interfere with the commonable rights of the tenants. (Wms. Comm. 150 *et seq.*) As to the inclosure of waste lands, see APPROVE, § 1; INCLOSURE.

§ 2. **Waste by tenant—Voluntary, or permissive.**—In the law of torts, waste is whatever does lasting damage to the freehold or inheritance of land, or anything which alters the nature of the property so as to render the evidence of ownership more difficult, or to destroy or weaken the proof of identity, or diminish the value of the estate, or increase the burden upon it. It is either voluntary or permissive—the former being an offense of commission, such as pulling down a house, converting arable land into pasture, opening new mines or quarries, &c.; the latter is one of omission, such as allowing a house to fall for want of necessary repairs, allowing land to remain flooded with water, &c. Co. Litt. 52b; Litt. § 71; Woodf. Land. & T. 566; Smith & S. L. & T. 228; Fawc. L. & T. 198; 8 Steph. Com. 405 *et seq.*

§ 3. **Impeachability for waste.**—A copyhold tenant may not commit waste

upon the lands he holds. (Wms. Seis. 40.) A freehold tenant in fee-simple or fee tail, on the other hand, may commit as much waste as he likes; but the general rule is, that a tenant for life of freehold land is impeachable for waste, *i. e.* he may not commit waste unless his estate is without impeachment of waste (or sans waste), as where it is expressly so given to him. See TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINGUISHED.

§ 4. **Equitable waste.**—But there are certain kinds of waste which courts of equity would always prevent, even where the tenant for life was unimpeachable for waste, and which are hence known as "equitable waste;" cutting down ornamental timber, and pulling down buildings, are instances of equitable waste, (Wats. Comp. Eq. 1153 *et seq.*; 3 Steph. Com. 405; Garth v. Cotton, 1 Ves. 524, 546; Baker v. Sebright, 13 Ch. D. 179;) where, however, a tenant for life pulls down a building and erects a new one in such a way as to effect an improvement, the court will not interfere, this being what is called "meliorating" or "ameliorating waste." Doherty v. Allman, 3 App. Cas. 709.

§ 5. The remedy for waste is an action for damages or an injunction.

WASTE, (defined). 62 How. (N. Y.) Pr. 212; 16 Hun (N. Y.) 226, 229; 7 Johns. (N. Y.) 227, 236; 3 Wend. (N. Y.) 341; 29 Mo. 325; Co. Litt. 53a.

— (what is). 6 T. B. Mon. (Ky.) 342, 348; 7 Pick. (Mass.) 152; 2 N. H. 430; 6 Yerg. (Tenn.) 334; Cro. Car. 531; 1 Dyer 65a, 281b; Hob. 234; 1 Hog. 391.

— (what is not). 1 Dall. (U. S.) 210; 5 Mas. (U. S.) 13; 2 Dana (Ky.) 374; 2 South. (N. J.) 552; 3 Paige (N. Y.) 259, 261; 12 Serg. & R. (Pa.) 272; 3 Yeates (Pa.) 261; 1 Rand. (Va.) 258; 8 Conn. Dig. 1052; 1 Dyer 361b; 1 Hog. 147, 238; 2 Moll. 515, 516, 536; 1 T. R. 55, 56.

— (is a tort). 3 Wend. (N. Y.) 106.
— (remedy for). Com. L. & T. 484.
— (ejectment will not lie for). Hard. 57.
— (mortgagee in possession is chargeable with). 4 Watts (Pa.) 460.
— (when order to stay will be granted). 11 Wend. (N. Y.) 160.

— (rule to stay not granted in action of trespass). 6 Halst. (N. J.) 193.
— (writ of). 3 Bl. Com. 225-227.

WASTE AND UNAPPROPRIATED, (what land is not). 2 Munf. (Va.) 257.

WASTE OR INJURY, (in act for protection of tax-payers). 62 How. (N. Y.) Pr. 212.

WASTE, VOLUNTARY, (distinguished from permissive waste). 4 Harr. & J. (Md.) 373.

WASTING OF HIS ESTATE, (defined). 18 B. Mon. (Ky.) 9; 7 Bush (Ky.) 307.

WASTORS.—Thieves.—Cowell.

WATCH.—See CONSTABLES, § 2; RATE, § 2.

WATCH AND WARD.—In the old books, one of the principal duties of constables is described as that of keeping watch and ward; "ward" being used to signify the duty of apprehending rioters and robbers during the daytime, while "watch" is properly applicable to the night. 1 Bl. Com. 356. See CONSTABLES; RATE, § 2.

WATCHMEN.—Constables; guardians of the peace by night. They may arrest all offenders, and particularly night walkers, and commit them to custody till the morning. (18 Edw. I. c. 4.) They have been generally superseded by the police force.

WATCHMEN, (authority of). 3 Taunt. 14.

WATER.—

§ 1. Water is either public or private. Public waters are the sea and its branches, and navigable rivers, the beds of which belong *primâ facie* to the sovereign. As a rule the soil of estuaries and of rivers (whether navigable or not) in which the tide ebbs and flows is vested in the sovereign. (Couls. & F. Waters 413.) As to the jurisdiction of the English crown over the open seas adjacent to the coast, see TERRITORIAL. See, also, HIGH SEAS; KING'S CHAMBERS; RIVERS.) Private waters are rivers, streams, lakes and ponds, &c., the beds of which belong to private persons. *Primâ facie* the soil of non-tidal rivers and lakes belongs to the owners of the adjoining land.

§ 2. Public waters are, as a rule, subject only to the public right of navigation, and to the right of access possessed by the owners of the adjoining shores or banks. (Orr Ewing v. Colquhoun, 2 App. Cas. 839; Bristow v. Cormican, 3 App. Cas. 641; Bell v. Corporation of Quebec, 5 App. Cas. 84; Phear Rts. W. *passim*. See ACCESS; FRONTAGE; NAVIGABLE; RIPARIAN.) As to the right of fishing in public waters, see FISHERY. As to territorial waters, see TERRITORIAL.

Private waters are of three kinds:

§ 3. Private waters navigable by public.—Private waters may be subject

to a right of navigation by the public, as in the case of the Severn and other rivers. This seems to be Lord Hale's meaning in the passage quoted in Lyon v. Fishmongers' Co., 1 App. Cas. at p. 673.

The distinction between public waters and private waters subject to a public right of navigation, is that in the case of the latter the owners of the soil may (as against the public) do what they like with the water and its bed so long as they do not obstruct the navigation. Orr Ewing v. Colquhoun, *ubi supra*.

§ 4. Natural rights of water.—Private waters passing through or between the lands of different proprietors may be subject to two kinds of rights, natural and acquired. Natural or proprietary rights are those possessed by every riparian proprietor, and consist principally in the right to have the water flow in its accustomed manner, without sensible disturbance or diminution by the superior and inferior riparian proprietors, and the right to the reasonable use of the water while it is flowing past his land, including its use for domestic purposes, for turning mills, &c. Phear Waters 30; Gale Easm. 218; Dart Vend.*364 *et seq.*; Orr Ewing v. Colquhoun, 2 App. Cas. 854; Mackenzie v. Bankes, 3 Id. 1324; Earl of Sandwich v. G. N. R., 10 Ch. D. 707. As to natural rights in an artificial watercourse, see Wood v. Waud, 3 Ex. 748, cited by Gale 308. As to the obligation of keeping an artificial flow of water within bounds, see West Cumberland, &c., Co. v. Kenyon, 11 Ch. D. 782.

§ 5. Acquired rights are those easements which entitle a riparian proprietor to interfere with a natural stream of water to an extent not justified by his natural or proprietary rights, *e. g.* by diminishing or obstructing the flow of water, or by polluting it, &c., or which entitle him to the use of an artificial watercourse (*q. v.*) (Gale Easm. 270.) Acquired rights in respect of water may exist in the inhabitants of a district by virtue of a custom. Shelf. R. P. Stat. 97; Harrop v. Ilirst, L. R. 4 Ex. 43. As to the right of fishing in private waters, see FISHERY, § 4 *et seq.*

§ 6. Land covered by water.—Water covering and surrounded by land belonging to one proprietor is not the subject of

any special rights. It is not considered as part of the soil, and therefore a right to go on a man's land and take water from it is an easement and not a *profit à prendre* (*Race v. Ward*, 4 El. & B. 702. Britton (154b) describes this as a right of common); and if a man grant to another a piece of water on his land, all that the grantee takes is the right of fishing in it. The proper legal description of a pond or the like is "land covered with water." Co. Litt. 4b.

For other points connected with water, see ACCRETION; ALLUVION; CONSERVATORS OF RIVERS; DERELICTION, § 3; FERRY; FORESHORE; FRONTAGE; SHIP; WATER SUPPLY. As to rights relating to water in Roman law and in jurisprudence, see Elvers, *Recht des Wasserlaufes*; Championnière, *Propriété des Eaux Courantes*; 1 *Zeitschrift für vergl. Rechtswft.* 261; 1 *Holtz. Encycl.* 388.

WATER, (land covered with, includes what). 1 Chit. Gen. Pr. 189, 190.

—— (right to enjoyment of). 6 Conn. 289.

—— (when action will lie for diverting). 5 Pick. (Mass.) 175.

WATER, A CERTAIN PART OF A STREAM OF, (in a deed). 2 N. H. 255.

WATER AND SOIL, (in a lease). L. R. 2 Ex. 285.

WATER, RUNNING, (is not private property). 2 Barn. & C. 910, 914.

WATER SUPPLY—WATERWORKS.—The principal English statutes relating to the supply of water are the Waterworks Clauses Acts, 1847 and 1863, for regulating waterworks constructed under private acts of parliament; the Metropolis Water Acts, 1852 and 1871, applying only to London; the Gas and Water Facilities Act, to facilitate the construction of gas and waterworks under provisional orders of the board of trade (see PROVISIONAL ORDER); the Public Health Act, 1875, §§ 51-70 of which empower urban authorities to construct or acquire waterworks within their districts in certain cases; and Stat. 40 and 41 Vict. c. 31, as to which see IMPROVEMENT OF LAND ACTS.

WATER-BAILIFF.—An officer in port-towns, whose duty is to search ships.

WATER-GAGE.—A sea-wall or bank to restrain the current and overflowing of the water; also, an instrument to measure water.—*Cowell*.

WATER-GANG.—A trench or course to carry a stream of water.—*Cowell*.

WATER-GAVIL.—A rent paid for fishing in, or other benefit received from, some river.—*Cowell*.

WATER-MEASURE.—A greater measure than the Winchester, formerly used for selling coals in the pool, &c. 22 Car. II. c. 11.

WATER ORDEAL.—See COLD WATER ORDEAL; HOT WATER ORDEAL.

WATER-POWER, (in tax act). 62 Me. 91.

WATERCOURSE.—

§ 1. **Artificial.**—In the proper sense of the word, a watercourse is an artificial channel (whether above or below ground) by which water is led from or over the land of one person to or over that of another. (Britt. 153b) The right of watercourse, in this sense of the word, is therefore the right of receiving or discharging water through another person's land, and is an easement, the tenement for the benefit of which the watercourse exists being the dominant tenement. (Gale Easem. 23; Shelf. R. P. Stat. 86; Phear Rts. W. 38.) As to what is a watercourse within the English Prescription Act, see Gale 169, n. (a). See EASEMENT.

§ 2. In some cases, however, it seems that where a watercourse passes over land for the discharge of water from the dominant tenement, the owner of the servient tenement may be entitled to have the flow of water through the watercourse uninterrupted, so that the dominant owner cannot stop or divert it. (*Wood v. Waud*, 3 Exch. 748, cited by Gale 308; *Singh v. Pattick*, 4 App. Cas. 121.) In such a case there are correlative easements, each tenement and owner being dominant or servient, according to the easement which is in question; and the watercourse is practically undistinguishable from a natural stream.

§ 3. **Natural.**—The term "watercourse" is also sometimes applied to natural streams. The rights of receiving and discharging the water of a natural stream over the land of adjoining proprietors are not easements, but natural rights. Gale 218; *West Cumberland, &c., Co. v. Knyon*, 11 Ch. D. 782. See WATER, § 4.

WATERCOURSE, (defined). 37 Wis. 226; 1 Steph. Com. 659, 693.

—— (what constitutes). 30 Conn. 180; 9 Cush. (Mass.) 171; 1 Beas. (N. J.) 280; 29 Wis. 511; Ang. Waterc. § 4.

—— (action for diverting). 1 Wils. 175.

WATERSCAPE.—An aqueduct or passage for water.

WAVESON.—Goods swimming upon the waves after a shipwreck.—*Cowell*.

WAX SCOT.—Duty anciently paid twice a year towards the charge of wax candles in churches.—*Spel. Gloss.*

WAY.—

§ 1. A right of way is where a person has the right of passing through or over land not belonging to him.

§ 2. **Public.**—Ways are either public or private. (Shelf. R. P. Stat. 62.) Public ways are more commonly called “highways” (*q. v.*)

§ 3. **Private** rights of way are of various kinds. They may be limited (1) as to the intervals at which they may be used, *e. g.* a way to church or market; (2) as to the actual extent of the user authorized, *e. g.* a foot-way, horse-way, cart-way, carriage-way, a way for driving cattle, or drift way, a way for carrying coals, &c.; and (3) as to the nature of the tenement to which the way is claimed, *e. g.* a way to a shed used for storing wood. Co. Litt. 56a; Gale Easem. 337; Shelf. R. P. Stat. 71.

As to the ways of necessity, see **EASEMENT**, §§ 7, 8.

§ 4. A private right of way is either an easement (*q. v.*) or a customary right. Formerly treated as an easement.

§ 5. The obstruction of a private way is a disturbance (*q. v.*); the obstruction of a public way is a nuisance (*q. v.*)

WAY, (defined). 5 Conn. 311, 315; 43 Ind. 455, 458.

— (is an easement). 1 Cow. (N. Y.) 568.

— (railway is). 4 Barn. & Ad. 726.

— (grant of, carries easement only). 9 Allen (Mass.) 159.

— (grant of a free and convenient). 1 T. R. 560.

— (right to repair is incident to grant of). 2 Bos. & P. N. R. 109, 115.

— (what is necessary to establish right of, by prescription). 1 Bailey (S. C.) 56.

WAY, AN INTENDED, (in a lease). Com. L. & T. 76.

WAY-BILL.—A writing in which is set down the names of passengers who are carried in a public conveyance, or the description of goods sent with a common carrier by land.

WAY-GOING CROP.—See **AWAY-GOING CROP**.

WAY-GOING CROP, (tenant when entitled to). 7 Bing. 465; 5 Moo. & P. 427, 440.

— (custom that the tenant shall have, is good). Doug. 201.

— (who may maintain trespass for). 5 Binn. (Pa.) 235; 1 Rawle (Pa.) 356.

WAY OF NECESSITY, (right of locating). 2 Pick. (Mass.) 574.

— (when exists). 14 Mass. 49, 55.

— (is limited by the necessity which created it). 2 Bing. 76.

WAY, PRIVATE, (defined). 3 Com. Dig. 57.

— (what is). 3 Com. Dig. 29.

WAY, RIGHT OF, (who entitled to). 2 Mass. 203.

— (how may be acquired). 10 Pick. (Mass.) 138.

— (when incident to a grant). 19 Wend. (N. Y.) 507.

— (when grant of may be presumed). 2 Pick. (Mass.) 466.

— (location of). 8 Pick. (Mass.) 339.

— (what is a misuser of). 5 Pick. (Mass.) 163.

— (how barred). 2 Whart. (Pa.) 123, 427.

WAY, RIGHT OF, FOR AGRICULTURAL PURPOSES, (is a limited and qualified right). 1 Holt 455.

WAYLEAVE is a right of way over or through land for the carriage of minerals from a mine or quarry. It is an easement (*q. v.*), being a species of the class called “rights of way” (see **WAY**), and is generally created by express grant or reservation. A wayleave rent may be a fixed annual sum, or a sum payable according to the quantity of minerals drawn over the way, or a combination of the two. Bainb. Mines (4 edit.) 211 *et seq.*; Elph. Conv. 264. See **RENT**, § 6.

WAYNAGIUM.—Implements of husbandry. 1 Reeves Hist. Eng. Law c. v. 268.

WAYS, (different kinds of). 8 Wheel. Am. C. L. 383.

WAYS, &c., USED OR ENJOYED, (a grant of all). 1 Dowl. & Ry. 505.

WAYS AND MEANS, COMMITTEE OF.—The functions and duties of a Committee of Ways and Means of a legislative body have reference to the funds by which expenditure is to be sustained. Loans, duties, taxes, tolls and every kind of means for raising revenue, are submitted to a Committee of Ways and Means.—*Dod Par. Comp.*

WAYS HERETOFORE ENJOYED, (in a conveyance). L. R. 6 Eq. Cas. 36.

WAYS NOW OCCUPIED OR ENJOYED, (in grant of easement). L. R. 10 Q. B. 360.

WAYS, OR WITH ANY PART THEREOF, USED OR ENJOYED, ALL, (in a lease). 5 Barn. & Ald. 830.

WAYS, PASSAGES EASEMENTS, ALL, (in a sheriff's deed). 1 Johns. (N. Y.) Cas. 284.

WAYS, PRIVATE, (how created). 1 Chit. Gen. Pr. 214.

WAYS, ROADS, &C., TO THE SAME BELONGING OR IN ANYWISE APPERTAINING, (in a grant). 3 Tyrw. 280.

WAYS THERETO BELONGING OR IN ANYWISE APPERTAINING, (in a conveyance). 1 Crompt. & M. 439.

WAYS THEREUNTO APPERTAINING, ALL, (in an under-lease). 2 Barn. & C. 96, 100.

WAYS THEREUNTO APPERTAINING, TOGETHER WITH ALL, (in a lease). 3 Dowl. & Ry. 237, 292.

WAYS THERewith USUALLY HELD, USED, OCCUPIED OR ENJOYED, (a conveyance of all). 2 Nev. & M. 517.

WAYWARDENS.—The English Highway Acts provide that in every parish forming part of a highway district there shall annually be elected one or more waywardens. The waywardens so elected, and the justices for the county residing within the district, form the highway board for the district. Each waywarden also represents his parish in regard to the levying of the highway rates, and in questions arising concerning the liability of his parish to repairs, &c. Highway Acts, 1862, 1863, 1864, 1878.

WE BIND OURSELVES, OUR HEIRS, EXECUTORS AND ADMINISTRATORS, (in a bond). 1 Treadw. (S. C.) 486.

WE HAVE APPOINTED A. A JUROR, (*venire facias* returned). 5 Me. 333.

WE PROMISE TO PAY, (in a promissory note create a joint obligation only). 5 La. 120.

WEAK-FOOT, (spoken of a horse). Oliph. Hors. 106.

WEALD—WALD—WALT.—A wood or grove.—*Cowell*.

WEALREAF.—The robbing of a dead man in his grave.

WEALTH.—All useful or agreeable things which possess exchange value, or, in other words, all useful or agreeable things except those which can be obtained in the quantity desired without labor or sacrifice. 1 Mill Pol. Ec. 10.

WEAPON, (what is). 3 Lev. 255.

WEAR, or WEIR.—A great dam or fence made across a river, or against water, formed of stakes interlaced by twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill.—*Cowell*.

WEARING APPAREL, (in exemption law). 18 Minn. 361.

— (a watch does not pass by bequest of). 83 Me. 535.

WEARING APPAREL, (bags are not). 55 Barb. (N. Y.) 389.

— (shawls are). 16 How. (U. S.) 251, 261.

WED.—A covenant or agreement.—*Cowell*.

WEDBEDRIP.—The customary service which inferior tenants paid to their lords in cutting down their corn, or doing other harvest duties.—*Cowell*.

WEEK, (in act respecting publication). 12 Abb. (N. Y.) Pr. N. S. 171; 3 Johns. (N. Y.) Ch. 74.

— (hiring by the). 2 East 423; 12 Id. 351; 2 T. R. 453.

WEEK, FOR THREE WEEKS, ONCE A, (publication in a newspaper). 5 Nev. 415, 430.

WEEK, ONCE A, (publication of notice). 4 Pet. (U. S.) 349.

WEEK TO WEEK, (tenant from). Com. L. & T. 348.

WEEKLY, (bequest of a sum to be paid). 2 Moll. 94.

WEEKS, ONCE EACH WEEK FOR THREE SUCCESSIVE, (in a statute). 117 Mass. 480.

WEEKS, WITH LIBERTY TO CRUISE SIX, (in a policy of insurance). 2 Doug. 527.

WEIGHAGE.—A toll or duty paid for weighing merchandise.

WEIGHER AND MEASURER, (in a statute). 14 Ct. of Cl. 256.

WEIGHT, BRITISH, (in a charter party). 1 Nott & M. (S. C.) 46; 3 Wheel. Am. C. L. 148.

WEIGHT, CONTENTS AND VALUE UNKNOWN, (in bill of lading). L. R. 2 Ex. 267.

WEIGHT OF EVIDENCE.—Such superiority in the evidence for one side over that for the other as calls for a verdict for the first. When a new trial is asked for on the ground that the verdict is against the weight of the evidence, the judge who tried the cause is consulted, and it does not very often happen that a new trial is ordered if he reports that he is satisfied with the verdict. In England, when the sum in dispute is under £20 in an action *ex contractu*, a new trial is not granted on this ground, and courts are generally indisposed to take this step unless the amount at issue is considerable or the moral interest great.

WEIGHTS, (in an action of trover). 12 Mod. 3.

WEIGHTS AND MEASURES.—The English Weights and Measures Act, 1878, enacts that the same weights and measures shall be used throughout the United Kingdom. It establishes standards of weights and measures, and provides that all contracts, sales, &c., made in the United Kingdom for any work, goods, &c., by weight or measure, shall be deemed to be made and had

according to those weights and measures, and if not so made shall be void. It also imposes penalties on persons using or having in their possession unjust measures or weights.

WEIGHTS OF AUNCCEL.—*See* AUNCCEL WEIGHT.

WEIR, (what is). 34 Conn. 370, 376.

WEIRS, (in rivers, are public nuisances). 7 East 195, 198.

WELFARE, PUBLIC, (in State constitution). 20 Ohio St. 349, 356.

WELL, (in a deed). 6 Gray (Mass.) 107, 110.

WELL AND FAITHFULLY, (in a bond). 10 Johns. (N. Y.) 271; 11 *Id.* 182.

WELL AND TRULY, (in an official bond). 1 Pet. (U. S.) 46, 69.

WELL AND TRULY ADMINISTER, (in an administrator's bond). Toll. Ex. 496; 3 Tyrw. 390.

WELL AND TRULY ADMINISTER ACCORDING TO LAW, (in an administrator's bond). 1 Litt. (Ky.) 93, 100; 8 Barn. & C. 151, 159.

WELL AND TRULY TO ADMINISTER THE GOODS, (in an administrator's bond, what is a breach of). 1 Cramp. & M. 690.

WELL AND TRULY EXECUTE, (in a bond). 2 Wheel. Am. C. L. 394.

WELL, ARTESIAN, (defined). 8 Fed. Rep. 269, 275.

WELL, TRULY AND FAITHFULLY ADMINISTER, (in administrator's bond). 21 Minn. 447.

WELSH MORTGAGE.—*See* MORTGAGE, § 10.

WEND.—A certain quantity or circuit of land.—*Cowell*.

WERE.—A pecuniary compensation for any injury. *See* WITE.

WERELADA.—A purging from a crime by the oaths of several persons, according to the degree and quality of the accused.—*Cowell*.

WERGILD—WEREGILD—WEREGILDUM.—In old Saxon law, the price of homicide or other enormous offenses, paid partly to the crown for the loss of a subject, partly to the lord whose vassal he was, and partly to the party injured or the next of kin of the party slain. This is the earliest award of damages in our law. 4 Bl. Com. 188.

WEST, (in a survey). 8 Ohio St. 423.

WEST-SAXON-LAGE.—The laws of the West Saxons.—*Cowell*.

WESTMINSTER.—A city by express creation of Henry VIII. It was dissolved as a see and restored to the bishopric of London by Edward VI., and turned into a collegiate church, subject to a dean, by Queen Elizabeth. The superior courts sat here, and the common law courts have continued to do so, as do still the divisions of the High Court of Justice which represent them. The Chancery Division, except upon the first day of certain sittings, sits at Lincoln's Inn.—*Wharton*.

WESTMINSTER CONFSSION.—A document containing a statement of religious doctrine, concocted at a conference of British and Continental Protestant divines at Westminster, in the year 1643, which subsequently became the basis of the Scotch Presbyterian Church.

WESTMINSTER THE FIRST.—The Stat. 3 Edw. I., A. D. 1275. This statute, which deserves the name of a code rather than an act, is divided into fifty-one chapters. Without extending the exemption of churchmen from civil jurisdiction, it protects the property of the church from the violence and spoliation of the king and the nobles, provides for freedom of popular elections, because sheriffs, coroners and conservators of the peace were still chosen by the freeholders in the county court, and attempts had been made to influence the election of knights of the shire, from the time when they were instituted. It contains a declaration to enforce the enactment of *Magna Charta* against excessive fines, which might operate as perpetual imprisonment; enumerates and corrects the abuses of tenures, particularly as to marriage of wards; regulates the levying of tolls, which were imposed arbitrarily by the barons and by cities and boroughs; corrects and restrains the powers of the king's escheator and other officers; amends the criminal law, putting the crime of rape on the footing to which it has been lately restored, as a most grievous but not capital offense, and embraces the subject of procedure in civil and criminal matters, introducing many regulations to render it cheap, simple and expeditious. (Campb. Lives Chanc. v. i, p. 167; 2 Reeves c. ix., p. 107.) Certain parts of this act are repealed by 26 and 27 Vict. c. 125.—*Wharton*.

WESTMINSTER THE SECOND.—The Stat. 13 Edw. I., st. 1, A. D. 1285, otherwise called the "Statute *de donis conditionalibus*." (See 2 Reeves c. x., p. 163.) Certain parts of this act are repealed by 19 and 20 Vict. c. 64, and 26 and 27 Vict. c. 125.—*Wharton*.

WESTMINSTER THE THIRD.—The Stat. 18 Edw. I., st. 1, A. D. 1290, otherwise called the "Statute *quia emptores terrarum*."—*Wharton*.

WESTWARDLY, (in a deed). 21 Barb. (N. Y.) 398, 404.

— (in a grant). 3 Cai. (N. Y.) 203; 1 Johns. (N. Y.) 156.

— (in a verdict, describing land). 5 Watts (Pa.) 398.

WHALE.—A royal fish, the head being the king's property, and the tail the queen's. 1 Broom & H. Com. 260; 2 Steph. Com. (7 edit.) 19, 448, 540.

WHALING VOYAGE, ON A, (in a policy of insurance). 3 Sandf. (N. Y.) 26.

WHARF.—A broad plain place, near some creek or haven, to lay goods and

wares on that are brought to or from the water.

There are, in England, two kinds: (1) *Legal*, which are certain wharves in all seaports, appointed by commission from the Court of Exchequer, or legalized by act of parliament; (2) *sufferance*, which are places where certain goods may be landed and shipped, by special sufferance granted by the crown for that purpose. 2 Steph. Com. (7 edit.) 501.

WHARF, (defined). 6 Mass. 332; 4 Bing. 137, 140.

—— (what is not). 6 Barn. & C. 720.

WHARF, OPEN PLACE, KEY OR, (in a statute). 1 W. Bl. 581, 590.

WHARFAGE.—Money paid for landing goods at a wharf, or for shipping and taking goods into a boat or barge thence.

WHARFAGE, (defined). 1 Bro. Adm. 37.

—— (how apportioned among joint owners). 1 Edw. (N. Y.) 580.

WHARFINGER.—He that owns or keeps a wharf, and takes care of goods for shipment or delivery. He has a general lien for the balance of his account. In some cases, as where he conveys goods from his wharf to vessels in lighters, he is a common carrier.

WHARFINGER, (defined). 32 Pa. St. 111.

WHAT ELSE I MAY THEN BE POSSESSED OF, (a devise of). 1 Russ. 276.

WHAT I MAY DIE POSSESSED OF, (in a will). 4 Com. Dig. 155.

WHAT IS LEFT, (in a will). 4 Rawle (Pa.) 81.

WHAT KIND SOEVER, ESTATE OF, (in a will). 1 H. Bl. 3.

WHAT MAY THEN BE REMAINING, (in a will). L. R. 10 Ch. D. 733.

WHAT NATURE OR KIND SOEVER, (devise of all my effects of). 4 Barn. & Ald. 59, 65; 2 Mau. & Sel. 448; 7 Taunt. 79, 122.

WHAT REMAINS, (in a will). 11 Ves. 330.

WHATEVER ELSE I HAVE, (in a will). 4 Rawle (Pa.) 81; 6 Serg. & R. (Pa.) 456.

WHATEVER ELSE I HAVE IN THE WORLD, (in a will). Cas. t. Talb. 286.

WHATEVER ELSE I HAVE NOT BEFORE DISPOSED OF, (in a will). 1 Salk. 239.

WHATEVER I HAVE OR SHALL HAVE AT MY DEATH, (in a will). 2 Harr. & M. (Md.) 273.

WHATEVER SHE CAN TRANSFER, (in a will). 2 Beav. 342.

WHATSOEVER AND WHERESOEVER, (in a will). 6 Pet. (U. S.) 68; 17 Mass. 73; 3 Atk. 494; 15 East 398; 1 Ves. 151.

WHATSOEVER ELSE HE HAS IN THE TENEMENTS, (in an agreement). 2 Taunt. 198.

WHATSOEVER I HAVE, (in a will). 3 Watts (Pa.) 474.

WHATSOEVER USED IN MANURING LAND, OR ANYTHING, (in a statute). 2 Chit. 655, 656.

WHEELAGE.—Duty or toll paid for carts, &c., passing over certain ground.—*Cowell*.

WHEEZING, (of a horse, what is). Oliph. Hors. 61.

WHEN, (in a lease). 3 Co. 21.

—— (in a statute). 4 Cranch (U. S.) 55.

—— (in a will). 1 Harr. & M. (Md.) 463, 501; 3 Ired. (N. C.) Eq. 323; 6 Jones (N. C.) Eq. 347; 1 Barn. & C. 721, 741; 3 Bro. Ch. 471; 8 Com. Dig. 1032; 1 P. Wms. 170; 3 T. R. 41; Toll. Ex. 171; 2 Vern. 199, 673; 6 Ves. 239; 7 Id. 422; 9 Id. 230.

—— (in pleading). Willes 41.

—— (when expresses time). 5 Watts (Pa.) 436.

WHEN AND AS OFTEN, (in a will). 10 East 549, 553.

WHEN AND SO OFTEN, (in a lease). 16 East 87, 96.

WHEN ANY JUDGMENT IS OBTAINED, (in a statute). 14 Vr. 109, 110.

WHEN DULY HONORED, (in a letter). 7 Taunt. 164, 167.

WHEN HE ATTAINS THE AGE OF TWENTY-ONE, (in a will). 11 Wend. (N. Y.) 259; 14 East 601.

WHEN HE IS ABLE, (a promise to pay). 3 Esp. 159.

WHEN HE SHALL COME OF AGE, (a note payable). 1 Burr. 226.

WHEN I AM ABLE, (a promise to pay). 4 Esp. 36.

WHEN NOT FOUND AS PRESCRIBED IN THIS CODE, (in penal code). 54 Cal. 37.

WHEN OR IF THEY ATTAIN TWENTY-ONE, (in a will). 1 Hare 10.

WHEN RECOVERED, (in a will). 13 Ves. 325.

WHERE, (as applied to the return of a writ, defined). Fortes. 132.

—— (when surplusage in a plea). Willes 41, 42.

WHEREAS.—A word which implies a recital of a past fact. The word *whereas*, when it renders the deed senseless or repugnant, may be struck out as impertinent, and shall not vitiate a deed in other respects sensible. *See* Platt Cov. 35.

WHEREAS, (equivalent to "it being so"). 4 Com. Dig. 681 m.

—— (in a declaration). 6 Binn. (Pa.) 30; 2 Cromp. & J. 418, 420; Lofft 320; 2 Wils. 203.

—— (in a declaration in trespass). 7 Cranch (U. S.) 158; 2 Mass. 358.

WHEREAS, FOR THAT, (in a declaration). 7 Johns. (N. Y.) 109, 111; 3 Hen. & M. (Va.) 127.

—— (in an indictment). Stark. Cr. Pl. 87.

WHEREAS THE SAID WRITING OBLIGATORY BECAME FORFEITED, (in a declaration). 4 Hen. & M. (Va.) 280.

WHEREBY, (in pleading). 6 Barn. & C. 295, 302.

WHEREBY AND BY FORCE OF THE STATUTE IN SUCH CASE MADE AND PROVIDED, (in a declaration). 3 Barn. & C. 186; 5 Dowl. & Ry. 13.

WHERESOEVER, (in an insurance policy). 1 Man. & Sel. 418.

WHERESOEVER AND WHATSOEVER, (in a will). 3 East 516, 523.

WHEREUPON, (equivalent to "after which," "upon which"). 1 Wyom. T. 419.

WHIG.—Sour milk. The name was applied in Scotland, A. D. 1648, to those violent covenanters who opposed the Duke of Hamilton's invasion of England in order to restore Charles I.

The appellation of Whig and Tory to political factions was first heard of in A. D. 1679, and though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued. 2 Hallam Const. Hist. c. xii.

Whig and Tory differed mainly in this, that to a Tory the constitution, inasmuch as it was the constitution, was an ultimate point, beyond which he never looked, and from which he thought it altogether impossible to swerve; whereas a Whig deemed all forms of government subordinate to the public good, and, therefore, liable to change when they should cease to promote their object. Within those bounds, which he, as well as his antagonist, meant not to transgress, and rejecting all unnecessary innovation, the Whig had a natural tendency to political improvement; the Tory an aversion to it. The one loved to descant on liberty and the rights of mankind; the other on the mischief of sedition and the rights of kings. Though both admitted a common principle—the maintenance of the constitution—yet, this made the privileges of the subject, that of the crown's prerogative, his peculiar care. Hence, it seemed likely, that through passion and circumstances, the Tory might aid in establishing despotism, or the Whig in subverting monarchy. The former was generally hostile to the liberty of the press and the freedom of inquiry, especially in religion; the latter, their friend. The principle of the one, in short, was amelioration; of the other, conservation.

The cardinal principle of Toryism was,

that the king ought to exercise all his lawful prerogatives without the interference, or unsolicited advice, even of parliament, much less of the people.

"And though," remarks Hallam (3 Const. Hist. c. 16), "I cannot reckon these old appellations by any means characteristic of our political factions in the nineteenth century, the names Whig and Tory are often well applied to individuals."—*Wharton*.

WHILST, (in a lease). 7 East 116.

WHIPPING, in England, may be inflicted as a punishment for offenses under several statutes, especially under the Criminal Law Consolidation Acts of 1861 and Stat. 26 and 27 Vict. c. 44. (Steph. Cr. Dig. 6; 1 Russ. Cr. & M. 80, 946.) It is also a lawful punishment in a few of the States, especially for wife beating. See **LARCENY**; **MISDEMEANOR**, § 3.

WHISTLER, (spoken of a horse). Oliph. Hors. 107.

WHITE ACRE.—A fictitious name given to a piece of land, in the English books, for purposes of illustration. See **BLACK ACRE**.

WHITE BONNET.—In the Scotch law, a fictitious bidder at an auction sale.—*Bell Dict. voc. Articles of Roup*.

WHITE CITIZEN, FREE, (who is, in the constitution). 11 Ohio 372.

WHITE FRIARS.—A place in London, between the Temple and Blackfriars, which was formerly a sanctuary, and therefore privileged from arrest.

* **WHITE MALE CITIZEN**, (in constitution of Michigan). 14 Mich. 406, 414.

WHITE MEATS.—Milk, butter, cheese, eggs, and any composition of them.—*Cowell*.

WHITE PAPER, (what is, as applied to the election law). 15 Ill. 492.

WHITE RENTS.—Payments received in silver or white money. 2 Broom & II. Com. 54; 1 Steph. Com. (7 edit.) 676.

WHITE SPURS.—A kind of esquires.—*Cowell*.

WHITE TITHES, (defined). 1 Younge & C. 448.

WHITEHART SILVER.—A mulct on certain lands in or near to the forest of Whitehart, paid into the Exchequer, imposed by Henry III. upon Thomas de la Linda, for killing a beautiful white hart which that king before had spared in hunting. Cam. Brit. 150.

WHIT-MONDAY.—See **WHITSUNTIDE**.

WHITSUN FARTHING.—Pentecostals (*q. v.*)

WHITSUNTIDE.—The feast of Pentecost, being the fiftieth day after Easter, and the first of the four cross-quarter days of the year.

It was styled Whit Sunday, or more probably Whitsun-day, some say partly because of the diffusion of light and knowledge then shed upon the apostles, and partly from the white garments which they that were baptized at this time put on. Mr. Hammon L'Estrange conjectures that it is derived from the French word *huict*, eight, Whit Sunday being *Huict-Sunday*, the eighth Sunday from Easter; observing that the octave of any feast is in Latin called "*utras*," from which he derives the French word *huictas*. In a Latin letter of Gerald Langbain, there is another account of the origin of this word met with in a Bodleian manuscript. It was a custom among our ancestors upon this day to give all the milk of their ewes and kine to the poor for the love of God, in order to qualify themselves to receive the gift of the Holy Ghost; this milk being then (as it is still in some counties) called "white meat," &c., and hence the name. See Wheat. Com. Pr. 237.

Whit Monday is, by the 34 and 35 Vict. c. 17, and 38 and 39 *Id.* c. 13, made a holiday in banks, custom houses, docks, inland revenue offices, and bonding warehouses. Whit Monday is a holiday in the several courts and offices of the English Supreme Court. Judicature Act, 1875, Ord. lxi., r. 4.

WHOEVER, (in a statute). 102 Mass. 214.

WHOLE, (in a will). 1 Madd. 257.

WHOLE AMOUNT OF THE CAPITAL STOCK, (in act taxing stock companies). 69 N. Y. 91, 94.

WHOLE BLOOD.—"A kinsman of the whole blood is he that is derived not only from the same ancestor, but from the same couple of ancestors." 1 Steph. Com. (7 edit.) 417. See BLOOD, § 2.

WHOLE ESTATE, (in a will). 4 Houst. (Del.) 414, 423; Stile 281; 4 T. R. 93.

WHOLE OF MY PROPERTY, (in a will). 2 Madd. 462.

WHOLE OF MY REMAINING PROPERTY, (in a will). 6 Bing. 630.

WHOLE SUM, (in general assignment act). 61 How. (N. Y.) Pr. 99.

WHOLE YEAR, (in a statute). 12 Mass. 262, 265.

WHOLESALE, (defined). 2 Wis. 237, 243.

WHOLESALE FACTORY PRICES, (promissory note payable in cotton yarn at). 2 Conn. 69.

WHOM IT MAY CONCERN, (policy of insurance for). 1 Pet. (U. S.) 160; 2 Mass. 8; 5 Wend. (N. Y.) 541; 7 *Id.* 82; 16 Am. Dec. 317; 1 Bony. Inst. 478, 486.

WHORE, (defined). 43 Iowa 183, 185.

WHOREDOM, (what constitutes). 6 Ind. 339.

WIC.—A place on the sea-shore on the bank of a river.

WICIA.—A country house or farm.—*Cowell.*

WICHENCRIF.—Witchcraft.—*Connell.*

WICKEDLY, MALICIOUSLY AND CORRUPTLY, (imply "wilfully"). 1 Cro. 201, *n.*

WIDEN, (spoken of a road, in a statute). 10 Vr. (N. J.) 45.

WIDOW.—A woman whose husband is dead.

WIDOW, (defined). 11 Op. Att.-Gen. 1; 6 Ind. 229, 231.

— (a devise to, as long as she should remain a). 2 Day (Conn.) 28; 7 Conn. 567.

— (interest of, in personal estate). 1 Pick. (Mass.) 157.

— (is not entitled to dower in wild lands). 15 Mass. 164; 1 Pick. (Mass.) 21.

— (in an indictment). 4 Car. & P. 579.

— (in marriage banns). 3 Dowl. & Ry 348.

WIDOW NOW PREGNANT, (in an order of a justice of the peace). 2 Dowl. P. C. 473.

WIDOW-BENCH.—The share of her husband's estate, which a widow is allowed besides her jointure.

WIDOW'S CHAMBER.—In London, the widow of a freeman was, by the custom of the city, entitled to her apparel and the furniture of her bed-chamber. See 19 and 20 Vict. c. 94.

WIDOW'S TERCE.—The right which a wife has after her husband's death to a third of the rents of lands in which her husband died infest: dower.—*Bell Dict.*

WIDOWER.—A man whose wife is dead.

WIDOWHOOD, (devise to wife during). 2 Wash. (U. S.) 416; 14 Mass. 88; 20 Wend. (N. Y.) 53; 6 Watts (Pa.) 87, 213, 345; 3 Whart. (Pa.) 575, 583; 2 Yeates (Pa.) 389; 3 *Id.* 79.

— provision by marriage settlement to continue during). 8 Wend. (N. Y.) 267.

WIDOWHOOD AND LIFE, (devise to wife during). 6 Mass. 169.

WIDOWS AND CHILDREN OF SEAMEN, (devise to). 3 Meriv. 48.

WIDOWS AND ORPHANS OF A PARISH, (devise to). 2 Sim. & S. 93.

WIFE.—A woman that has a husband. See HUSBAND AND WIFE.

WIFE, (devise to "his beloved"). 1 Russ. & M. 629.

— (control of, over property of husband in his absence). 10 Wend. (N. Y.) 79.

— (when competent, after divorce, to testify against husband). 1 Hill (N. Y.) 63.

— (when may testify against administrators of deceased husband). 2 Hill (N. Y.) 186.

— (when must join in an action). Coxe (N. J.) 217.

— (in an indictment). 1 Cro. 198; 2 Leon. 183.

— (in a will). 8 Com. Dig. 475.

WIFE, DEAR, (devise to my). 1 Tenn. Ch. 621.

WIFE, HIS, (in a will). Sax. (N. J.) 489.

WIFE, TO HIS, (a devise). 6 Sim. 1.

WIFE'S EQUITY.—See EQUITY TO A SETTLEMENT.

WIGREVE.—The overseer of a wood.—Cowell.

WILD ANIMALS (or animals *feræ naturæ*).—Animals of an untamable disposition. See ANIMAL, § 2.

WILD LAND, (right of lessee to cut timber on). 7 Johns. (N. Y.) 227.

WILD LANDS, (when widow is dowable of). 7 Pick. (Mass.) 143.

— (when widow not dowable of). 15 Mass. 164; 1 Pick. (Mass.) 21.

WILD'S CASE, RULE IN.—A. devise to B. and his children or issue, B. having no issue at the time of the devise, gives him an estate tail; but if he have issue at the time, B. and his children take joint estates for life. 6 Co. 16 b; Tud. Cas. R. P. (2 edit.) 542, 581.

This case does not apply to personality. See *Audsley v. Horn*, 7 W. R. 125, affirmed on App. 8 W. R. 150; 2 Jarm. Wills (3 edit.) 365, 388.

WILFUL.—

§ 1. Wilful means intentional or deliberate. Thus, if a person accidentally strikes another, this is a battery giving rise to a right of action for damages, while if he does it intentionally it is a wilful battery, for which the party injured may have an action of damages or a criminal prosecution. See BATTERY.

§ 2. Similarly a "wilful default" is an act of omission done with intention. Mortgagees and other persons holding securities are liable for losses caused by their wilful default; hence, if a mortgagee of land in possession does not avail himself of an opportunity of beneficially letting the land, he is bound to give credit for what he has thus lost by his wilful default. (See ACCOUNT, § 13 *et seq.*; MORTGAGEE IN POSSESSION.) Wilful default is a species of contributory negligence. See NEGLIGENCE, § 6.

WILFUL, (in an indictment). 5 T. R. 607.

— (obstruction of highway). 4 C. P. D. 136.

WILFUL AND MALICIOUS, (voluntary trespass is not *per se*). 6 Johns. (N. Y.) 277.

WILFUL DESERTION, (in a statute). 115 Mass. 336.

— (in divorce law means "intentional"). 32 Cal. 467.

WILFULLY, (defined). 1 Dak. T. 472; 74 Mo. 207, 214.

— (not synonymous with "unlawfully"). 3 Heisk. (Tenn.) 6.

— (not synonymous with "voluntarily"). Brayt. (Vt.) 223.

— (what words imply). 1 Cro. 201, n.

— (in a statute). 1 Abb. (U. S.) 196; 1 Baldw. (U. S.) 378; 6 Otto (U. S.) 702; 105 Mass. 463; 110 Id. 401; 9 Metc. (Mass.) 270; 9 Gray (Mass.) 303; 47 Vt. 537; 1 Ex. D. 419.

— (in penal statute). 34 Wis. 675.

— (in act of congress). 8 Bost. L. Rep. 79.

— (in railroad act). 31 Iowa 187.

— (in an indictment). 2 Marsh. 466.

— (in an indictment for perjury). 3 Yeates (Pa.) 413; 5 Barn. & C. 246; Stark. Cr. Pl. 86, 249.

WILFULLY AND CORRUPTLY, (when necessary in an indictment for perjury). 7 Dowl. & Ry. 665, 671.

WILFULLY AND MALICIOUSLY, (in a statute). 122 Mass. 19, 35.

— (in crimes act). 60 Me. 410; 11 Am. Rep. 209.

— ("unlawfully and maliciously" is not equivalent to). 60 Me. 410.

WILFULLY FALSE, (necessary in averring malice). 6 Dowl. & Ry. 8.

WILL.—

§ 1. A will is a disposition or declaration by which the person making it (who is called the "testator") provides for the distribution or administration of property after his death. It does not take effect until the testator's death, and is always revocable by him.

§ 2. "Wills," "testaments," and "codicils."—Formerly "will" signified a testamentary disposition of land, as opposed to a testament (*q. v.*), but this distinction is now obsolete. (Wms. Ex. 6; 2 Bl. Com. 373.) In the strict sense of the word, a will includes all testamentary dispositions by the testator in force at the time of his death; but in practice "will" signifies a testamentary document which is in form complete in itself, while additional or supplementary dispositions are called "codicils." See CODICIL; TESTAMENTARY, § 2.

§ 3. *Lex loci—Lex domicilii.*—A will of fixed or immovable property (including leaseholds) is generally governed by the *lex loci rei sitæ*. (See LEX LOCI.) Thus, a will made in one State, must, in order to operate on lands in another, be executed and attested according to the law of the latter State, and must contain expressions which would comprise and pass the lands

in question. In regard to personal, or rather movable property, the will is governed by the law of the place where the person was domiciled at the time of his death. But as regards formalities of execution, this rule is now subject to some exceptions, as to which *see* DOMICILE, § 2. Jarm. Wills 1 *et seq.*

§ 4. **Testamentary capacity.**—Infants and lunatics are wholly incapable of making wills while their disability lasts. A married woman may make a will in respect of property settled to her separate use, or, with the assent of her husband, in respect of personal estate not so settled. (*See* SEPARATE ESTATE; TESTABLE) All other persons have complete testamentary capacity. A person may also have a power of appointment by will over property not belonging to him. (*See* POWER, § 6; TESTABLE.) The rule of the probate court as to such wills, is that it will grant probate of any instrument of a testamentary character if duly executed, leaving the question whether it is a valid exercise of the power to be decided by the proper tribunal. (Jarm. Wills 29.) So that a testamentary document purporting to be made in execution of a power may be proved as a will and yet be invalid, because it has not complied with the power. By the English Wills Act, every will executed in accordance with its provisions (*infra*, § 7) is declared to be, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, although the power may have expressly required that a will made in exercise of it should be executed with some additional or other form of execution or solemnity. Section 10. *See* APPOINTMENT, § 1; EXECUTE, § 2.

§ 5. **Testamentary power.**—A person having testamentary capacity may dispose by will of all real and personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so disposed of, would devolve upon his heir, executor or administrator, including estates *pur autre vie*, and all contingent, executory and future interests in property, and all rights of entry. *See* OCCUPANCY, § 8; RIGHT OF ENTRY, § 2.

As to devises in mortmain, *see* that title.

§ 6. No particular form of words is required to make a valid will (Williams 99; Wats. Comp. Eq. 1163. As to the ordinary frame of wills, *see* Dav. Prec. Conv. iv.) so long as the testator's intention can be ascertained; otherwise its provisions will fail from uncertainty (*q. v.*)

§ 7. **Formalities.**—A will must in ordinary cases be in writing, and signed at the foot or end by the testator, or by some one in his presence and by his direction, and the signature must be made or acknowledged by the testator in the presence of two or more witnesses, who must be present together at the same time, and must attest and subscribe the will in the presence of the testator and of each other.

§ 8. A devise or bequest to an attesting witness, or to his or her wife or husband, does not affect the validity of the will, but the gift is, in most jurisdictions, void.

§ 9. **Nuncupative.**—A nuncupative will is when the testator, without any writing, declares his will before a sufficient number of witnesses. Before the Statute of Frauds, such wills were as valid for disposing of personalty as written wills, but by that statute (29 Car. II. c. 3, § 19 *et seq.*) they were laid under several restrictions, except when made by soldiers or seamen in actual service. And, by the English Wills Act, nuncupative wills are altogether rendered invalid, except those made by soldiers or seamen in accordance with the old law. Wills Act, § 11; Williams 111.

As to the revocation and revival of wills, *see* those titles.

§ 10. **Operation of will.**—Every will is construed, with reference to the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear. As to the effect of this rule, *see* DEVISE, § 2; LAPSE, § 1; LEGACY, § 2 *et seq.*; RESIDUE.

§ 11. **Form and contents of will.**—Wills are not required to be in any particular form, but a well-drawn will usually contains the following clauses (or as many of them as may be required) in the following order: (1) Commencement ("This is the last will of me, A. B., &c."); (2) revocation of former wills; (3) specific lega-

cies; (4) general legacies; (5) annuities; (6) specific devises; (7) residuary gift; (8) clauses relating to property settled or given in trust (if any); (9) devise and bequest of trust and mortgage estates; (10) appointment of executors and guardians; (11) testimonium. (Elph. Conv. 427.) See the various titles; and as to settlements made by will, see SETTLEMENT; TRUST.

§ 12. Probate of will.—As soon as possible after the testator's death, it is the duty of the executor to prove his will, either in common or in solemn form. (See PROBATE.) If there is no executor, letters of administration with the will annexed are granted. (See LETTERS OF ADMINISTRATION.) Before the probate is obtained, an executor may act as effectually in almost everything as if probate had been granted, and when granted it has relation back to the death of the testator. In the case of an administrator, on the other hand, acts done before the grant of administration are, as a general rule, not binding. Both rules are subject to exceptions. Wats. Comp. Eq. 235.

WILL, (defined). 45 Miss. 632.

— (what is). 5 Cush. (Mass.) 261.

— (distinguished from "testament"). 21

Wend. (N. Y.) 430, 436.

— (form of). 1 Chit. Gen. Pr. 357.

— (agreement to leave money by). 1 W. Bl. 353.

— (what is legal proof of). Penn. (N. J.) 35.

— (in trust deed, equivalent to "his last will"). Dyer 314 b.

— (who is an officer at). 1 Ld. Raym. 391.

WILL AND BEQUEATH, I, (in a will). 1 McCord (S. C.) 546.

WILL AND DESIRE, (in a will). 5 Fla. 51.

WILL CHARGE HIS ESTATES, (distinguished from a covenant that all his estates are charged). 2 Ball & B. 223.

WILL, CONDITIONAL, (what is not). 9 Pet. (U. S.) 174.

WILL, I, (in a will). 2 Vern. 466, 467.

WILL IN WRITING, (in a statute). 7 East 299.

WILL IT, TO, (equivalent to "dispose of it by will"). 2 Myl. & K. 434, 436.

WILL, NUNCUPATIVE, (made in another State). 13 Allen (Mass.) 38.

WILL SELL, (in a contract for ice). 12 Allen (Mass.) 379.

WILL, TENANCY AT, (what is). 1 Johns. (N. Y.) Cas. 33; 1 Chit. Gen. Pr. 256.

WILL, TENANT AT, (who is). 5 Day (Conn.) 468; 23 Wend. (N. Y.) 616.

— (has no estate that can be assigned by him). Penn. (N. J.) 803.

WILLA.—The relation between a master or patron and his freedman, and the relation between two persons who had made a reciprocal testamentary contract. Macnaght. Mohum. Law 34 n.

WILLING AND DESIRING, (in a will). 1 Atk 469, 470, 618.

WILLINGLY, (not equivalent to "wittingly"). 54 Miss. 490.

WIN, (in lease of coal mine). L. R. 5 Ch. App. 103.

WINCHESTER MEASURE.—The standard measure which was originally kept at Winchester. It is abolished by 5 and 6 Will IV. c. 63.

WIND AND LIMB, SOUND IN, (warranty of a horse). 7 Bing. 603, 605.

WIND-GALLS, (of a horse, what are). Oliph. Hors. 107.

WIND-SUCKING, (of a horse, what is). Oliph. Hors. 108.

WINDING-UP.—

§ 1. Winding-up, as applied to an English partnership or company, is the operation of stopping the business, realizing the assets and discharging the liabilities of the concern, settling any questions of account or contribution between the members, and dividing the surplus assets (if any) among the members. (Lind. Part. 1028.) The term "winding-up" is also sometimes applied to the estates of deceased persons, but "administration" (*q. v.*) is the more usual expression.

§ 2. Partnership.—The winding-up of a partnership is either (1) voluntary (*i. e.* by agreement between the partners); or (2) by order of a court made in an action for the dissolution of the partnership. (See DISSOLUTION.) A partnership consisting of more than seven members may be wound up by an order obtained on a petition under the Companies Act, 1862, § 199, in which case the winding-up is almost the same as if the partnership were a company. See *In re South Wales Atlantic Steamship Co.*, 2 Ch. D. 763.

§ 3. Company.—The winding-up of companies before 1862 was effected under the Winding-up Acts of 1848-49, and the Joint Stock Companies Acts, 1856-58, which provided a machinery partly in Chancery, and partly in bankruptcy (Lind. Part. 1211); but now all companies, except railway companies incorporated by act of parliament, are wound up under the provisions of the Companies Act, 1862, in one of three manners:

§ 4. Compulsory.—A compulsory winding-up takes place when the court having jurisdiction in the matter (*e. g.* the High Court in the Chancery Division), makes an order to that effect on a petition (Lind. Part. 1241; Thr. Jt. S. Co. 172 *et seq.*), presented by the company itself, or by a creditor or a contributory. The commonest case of compulsory winding-up occurs where a company cannot pay its debts. Companies not registered under the act can only be wound up

compulsorily. (§ 199; Thr. Jt. S. Co. 205.) The provisions of the act also apply to building, friendly, and industrial and provident societies registered under the acts regulating those associations (*see* the various titles). All the proceedings in a compulsory winding-up are taken under the direction of the court.

§ 5. **Voluntary.**—A voluntary winding-up takes place when the company passes a resolution to that effect. Such a resolution must, in certain cases, be either a special or extraordinary resolution. (*See* RESOLUTION, § 2.) A voluntary winding-up is conducted without the intervention of any court. Lind. Part. 1410.

§ 6. **Subject to supervision.**—A winding-up may be voluntary, but subject to the supervision of the court, *i. e.* the winding-up is determined on by resolution of the company, but an order is subsequently made by the court that it shall be carried out subject to such restrictions as the court may impose, and with such liberty for persons interested to apply to the court, and generally in such manner as the court thinks just. Lind. Part. 1420. *See In re Rochdale, &c., Co.*, 12 Ch. D. 775.

§ 7. **Commencement of winding-up.**—By the doctrine of relation (*see* RELATE) a compulsory winding-up is deemed to commence at the time of the presentation of the petition. Voluntary winding-up (whether under supervision or not) commences at the time of the passing of the resolution to wind up, or the passing of the second resolution, if the resolution is a special one. (Companies Act, 1862, § 130; Dawes' Case, L. R. 6 Eq. 232.) All dispositions of the property of the company, and every transfer of shares or alteration in the status of the members of the company, made after the commencement of the winding-up, are void, except in certain cases. *See* Emmerson's Case, L. R. 9 Eq. 231.

§ 8. **Effect of winding-up.**—The principal effects of a winding-up are: (1) Nothing can be done after its commencement, except with a view to realize the company's assets, enforce contributions from its members if necessary, and distribute them among its creditors, (*see* the Judicature Act, 1875, § 10,) and then, if there is any surplus, among the members. (2) Liquidators must be appointed to carry out these objects. (3) No legal proceeding giving one creditor an advantage over another, can be taken against the company or the members, except by leave of the court, in the winding-up. (Companies Act, 1862, § 85.) Where a company is being wound up compulsorily or subject to supervision in the High Court, the judge before whom it is pending may order any actions by or against the company pending in any other division to be transferred to him. Rules of Court, li. 2 a. *See* ADJUDICATION, § 2; CLAIM, § 2; CONTRIBUTORY; DISSOLUTION, § 3; LIQUIDATOR; and compare ADMINISTRATION; BANKRUPTCY.

WINDOW.—*See* LIGHT.

WINDOW TAX.—A tax on windows, levied on houses which contained more than six windows, and were worth more than five pounds per annum; established by 7 Will. III. c. 18.

The 14 and 15 Vict. c. 36 substituted for this tax a tax on inhabited houses.

WINDOWS, (action for stopping up). Say. 216.

— (overlooking the privacy of a neighbor). 18 Wend. (N. Y.) 261.

WINDOWS, ANCIENT, (what are considered) 2 Barn. & C. 686; 1 Moo. & M. 400.

WINDSOR FOREST.—A royal forest founded by Henry VIII.

WINNER, (in act to prevent gaming). 2 Hall (N. Y.) 299.

WINNING COAL, (in license to work mine) 13 Ch. D. 277.

WINTER CIRCUIT.—An occasional circuit appointed for the trial of prisoners, in England, and in some cases of civil causes, between Michaelmas and Hilary Terms.

WINTER HEYNING.—The season between 11th November and 28d April, which is excepted from the liberty of commoning in certain forests. 23 Car. II. c. 3.

WINTER SPERM OIL, (in a bill of parcels). 2 Wheel. Am. C. L. 349.

WISBUY, ORDINANCES OF.—A code of maritime jurisprudence compiled at this place in the isle of Gothland, principally from the law of Oleron, in the year 1400, for the governance of the Baltic traders. *See* 3 Hall. Mid Ages c. ix., pt. 2, p. 334.

WISH, (in a will). 6 Jones (N. C.) Eq. 371. — (of consignor to factor; when amount to a command). 14 Pet. (U. S.) 479; 11 Serg. & R. (Pa.) 280.

WISH AND DESIRE, (in a will). 2 Barn. & Ald. 710, 721.

WISH AND WILL, IT IS MY, (in a will). 34 Ala. 349.

WISH, I, (in a will). 1 Desaus. (S. C.) 377 n.

WISH TO LEAVE, I, (in a will). 1 Phillim. 36.

WISH, WILL, OR DESIRE, (when not sufficient to create a trust). 5 Fla. 51.

WISTA.—Half a hide of land, or sixty acres.

WITAM.—The purgation from an offense by the oath of the requisite number of witnesses.

WITCHCRAFT.—Conjuration; sorcery.

No prosecution shall for the future be carried on against any person for witchcraft, sorcery, enchantment or conjuration, or for charging another with any such offense; but all persons pretending to use the same shall be punishable by imprisonment. 9 Geo. II. c. 5; 5 Geo. IV. c. 83, § 4. *See* 1 Harris' Life of Lord Hardwicke, 281; and 4 Broome & H. Com. 70, 205; 4 Steph. Com. (7 edit.) 210.

WITE.—A punishment, pain, penalty, mulct or criminal fine.—*Cowell.*

The *wite* was a penalty paid to the crown by a murderer. The *were* was the fine a murderer had to pay to the family or relatives of the deceased, and the *wite* was the fine paid to the magistrate who presided over the district where the murder was perpetrated. Thus, the *wite* was the satisfaction to be rendered to the community for the public wrong which had been committed, as the *were* was to the family for their private injury.—*Bosw. Anglo-Saxon Dict.*

WITEKDEN.—A taxation of the West Saxons, imposed by the public council of the kingdom.

WITENA-GEMOT, or WITTENA-GEMOTE.—A convention or general assembly of great and wise men to advise and assist the sovereign in the time of the Saxons, answering to the modern parliament. 2 Hall. Mid. Ages c. viii., pt. 1, 279. See FOLK MOTE; PARLIAMENT.

WITENS.—The chiefs of the Saxon lords or thanes, their nobles and wise men.

WITH, (connecting devises in a will). 1 Atk. 471.

WITH A RESERVE OF THE STREET, (in a deed). 33 Me. 502.

WITH ALL FAULTS, (in a warranty). 5 Barn. & Ald. 240.

WITH ALL LIBERTIES AND FREE CUSTOMS BELONGING, (in grant of market). 3 Ex. D. 292.

WITH ALL SUITABLE PRECAUTIONS, (in contract). 20 Minn. 277.

WITH ALL USUAL AND REASONABLE COVENANTS, (in an agreement for a lease). 3 Anstr. 700.

WITH EFFECT, (in a replevin bond). 1 Pick. Mass. 285, 286.

WITH EFFECT AND WITHOUT DELAY, (in a declaration). 5 Barn. & Ad. 146.

WITH EFFECT, PROSECUTE, (in a replevin bond). 2 Watts & S. (Pa.) 83.

WITH FORCE, OR WITH FORCE AND ARMS, (in complaint for assault and battery). 20 Minn. 418.

WITH INTEREST, (addition of, to a promissory note). 1 Allen (Mass.) 477; 112 Mass. 315, 319.

WITH ISSUE, (in a will). FitzG. 68.

WITH SECURITY, (in act concerning bail). 5 Serg. & R. (Pa.) 330.

WITH STRONG HAND.—An indispensable phrase in describing a forcible entry in an indictment.

WITH THE INTENT TO SELL, (in a statute). 97 Mass. 567, 570.

WITH THE WHARF THEREON, (in a deed). 122 Mass. 394.

WITH USUAL COVENANTS, (in an agreement for a lease). 15 Ves. 528.

WITHDRAW, (in a statute). 19 Ga. 314.

— (in absentee act). 1 Mass. 392.

WITHDRAWAL.—

§ 1. Claim.—Where the plaintiff in an action does not wish to proceed with a

portion of his claim, he may withdraw that part of his statement of claim either (1) by giving notice to the defendant, if no step subsequent to the delivery of the statement of defense has been taken; or (2) at any other time by leave of the court or a judge.

§ 2. A defendant may also, by similar leave, withdraw the whole or any part of his defense or counterclaim.

§ 3. When a cause has been entered for trial, it may be withdrawn by consent. See DISCONTINUANCE.

WITHDRAWAL OF A JUROR.—

At the trial of an action, when neither party feels sufficient confidence to render him anxious to persevere till verdict, or when the judge recommends that the action should not proceed further, the parties may, by consent, for it cannot be done otherwise, withdraw a juror; and as that leaves the jury incomplete, there can be no verdict, and the trial comes to an end. The withdrawal of a juror in this way always puts an end to the cause; and if the action be afterwards proceeded with, an application may be made to the court or a judge to stay the proceedings. This practice was peculiar to the common law courts, but does not seem to have been abolished in civil cases by the Judicature Acts; and it still applies to criminal trials. Sm. Ac. 139; Arch. Pr. 376; Arch. Cr. Pl. 175. See DISCHARGE, § 6.

WITHERNAM.—See CAPIAS IN WITHERNAM.

WITHERSAKE.—An apostate, or perfidious renegade.—*Cowell.*

WITHHOLDING, (in evidence act). 2 Watts (Pa.) 341.

— (when considered as a taking). 16 Mass. 154, 155.

WITHIN, (defined). 54 Ala. 529, 531.

— (a certain time). 6 Paige (N. Y.) 147; 5 Bro. P. C. 438.

WITHIN A FORTNIGHT, (in an agreement). 3 Ad. & E. 61.

WITHIN A YEAR, (in statute of frauds). 16 Gray (Mass.) 448.

WITHIN ——— DAYS, (in a statute). South. (N. J.) 323.

— (in act concerning appeals). 1 Serg. & R. (Pa.) 412; 3 Ill. 395.

— (in act respecting executions). 4 Cush. (Mass.) 420.

— (in practice act). 15 Serg. & R. (Pa.) 43.

WITHIN FOUR DAYS FROM THE TIME, (in a statute). 119 Mass. 179, 185.

WITHIN EIGHT DAYS, (equivalent to eight entire days). 1 Meriv. 242.

WITHIN TWELVE RUNNING DAYS, (a vessel to be discharged). 2 Car. & P. 601.

WITHIN TWENTY DAYS, (in a statute). 5 T. R. 283.

— (in act concerning appeals). 3 Pa. 201.

WITHIN SIX MONTHS, (in a statute). 5 Co. 1; Doug. 463; Dyer 218.

WITHIN ONE YEAR, (in act concerning appeals). 2 Watts (Pa.) 283.

— (in act concerning redemption of land on execution). 1 Pick. (Mass.) 485.

— (in statute of limitations). 15 Mass. 194.

WITHIN THREE YEARS, (in a will). 1 Madd. 172; 3 Meriv. 7.

WITHIN ONE MILE, (a covenant not to trade). 2 Stark. 89.

WITHIN THE DISTANCE OF HALF A MILE, (in a covenant). 9 Barr. & C. 774.

WITHIN THE JURISDICTION, (in a statute). 1 P. D. 300.

WITHOUT, (in a statute). 2 Allen (Mass.) 508.

WITHOUT ANY, THE LAWFUL LET, &C., (in a covenant). 1 Brod. & B. 319.

WITHOUT DAY.—Formerly, when a defendant in an action succeeded on a plea, the judgment in certain cases was that he should “go without day” or “go quit without day,” *i. e.* go free from the action without a continuance to any certain day; in other words, be discharged of further attendance. In some cases (*e. g.* in case of nonsuit) this disposed of the action altogether, while in other cases it only suspended the action until the plaintiff remedied some defect in his title. Co. Litt. 134 b, 362 b. See *per* Bramwell, L. J., in *Poyser v. Minors*, 7 Q. B. D. at p. 336.

WITHOUT DEFALCATION, (in a promissory note). 9 Serg. & R. (Pa.) 196; 14 Id. 127.

— (in a note under seal). 2 Pa. 245.

WITHOUT DEFALCATION OR DISCOUNT, (in a promissory note). 3 Gr. (N. J.) 11, 14; 4 Halst. (N. J.) 134.

WITHOUT DELAY, (in a replevin bond). 2 Nev. & M. 703.

WITHOUT ENCUMBRANCE, (in a deed). 72 Ind. 343, 346.

WITHOUT EVER HAVING BEEN MARRIED, (in marriage settlement). 13 Ch. D. 493.

WITHOUT HAVING BEEN MARRIED, (in marriage settlement). 11 Ch. D. 270.

WITHOUT HER CONSENT, (in act concerning rape). 105 Mass. 377.

WITHOUT IMPEACHMENT OF WASTE.—See *ABSQUE IMPETITIONE VASTI*.

WITHOUT IMPEACHMENT OF WASTE, (in a contract). 6 Ves. 114.

WITHOUT ISSUE, (in a will). 12 Cush. (Mass.) 387; 8 Ir. Eq. 185; 9 East 386; 1 P. Wms. 198, 432; 2 Vern. 766.

WITHOUT ISSUE, DYING, (in a will). 3 J. J. Marsh. (Ky.) 91.

WITHOUT LEAVING, DEATH, (in a will). L. R. 4 Eq. Cas. 265.

WITHOUT LEAVING ISSUE, (in a will). 13 Md. 415; 3 Serg. & R. (Pa.) 479; 12 East 253, 261; 6 Ch. D. 239, 604.

WITHOUT PREJUDICE.—See *PREJUDICE*.

WITHOUT PREJUDICE, (in a letter). 3 Man. & G. 903.

WITHOUT RECOURSE.—A phrase used by an agent who indorses a bill or note for his principal, which protects him from liability. Byles Bills (10 edit.) 38, 152. See *SANS RECOURS*.

WITHOUT RECOURSE, (in an agreement to take a bill). 3 Campb. 352.

— (in an assignment). 2 Hen. & M. (Va.) 189.

— (indorsed on a bill of exchange). 3 Conn. 516; 2 Wheel. Am. C. L. 260.

— (on a certificate of deposit). 8 Watts & S. (Pa.) 353.

— (indorsed on a promissory note). 7 Cranch (U. S.) 159; 1 Minor (Ala.) 166; 2 Harr. (N. J.) 227; 18 Ohio St. 515.

— (on a treasury note). 2 Pa. St. 200.

WITHOUT RESERVE.—When property is thus announced to be sold, a puffer ought not to be appointed. St. Leon. Vend. & P. 8.

WITHOUT RESERVE, (in particulars of sale). 5 Madd. 34, 37.

WITHOUT THIS, THAT, (in a traverse). 3 Bouv. Inst. 294.

WITNESS.—

§ 1. In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, “witness” has acquired the sense of a person who is present at and observes a transaction.

§ 2. *Attesting witness.*—Hence, when a deed or other instrument is executed in the presence of a person, and he records the fact by signing his name on it, he is said to “witness” it, or to be an “attesting witness.” As to the proof of attested documents, see *ATTEST*. As to gifts to attesting witnesses in the case of wills, see *WILL*, § 8.

§ 3. *Procedure.*—In procedure, a witness is a person who makes a *vivâ voce* statement to a judicial tribunal on a ques-

tion of fact. (*See EVIDENCE, § 7; EXAMINATION; FACT.*) Witnesses require to be sworn before their evidence is given (*see OATH, § 2*), unless they have conscientious objections to taking an oath, or have no religious belief, in which case they make a solemn affirmation. *See AFFIRM, § 3.*

§ 4. The general rule is that all persons are competent to give evidence, provided they have sufficient mental understanding, except that a person accused of a crime (and the husband or wife of such a person) is not competent to give evidence respecting it. This latter English rule has been abolished or relaxed in most of the States. *See 4 Crim. Law Mag. p. 323. See, also, COMPETENCY; CREDIBILITY; VOIRE DIRE.*

§ 5. All persons (if competent) are compellable to give evidence. But every witness has a right to refuse to answer certain questions, such as a question the answer to which would have a tendency to expose the witness to criminal proceedings, or to a forfeiture or penalty. Liability to civil proceedings is not a ground of privilege. (*Best Ev. 188 et seq.*) *See further, on this subject, CONFIDENTIAL COMMUNICATIONS; PRIVILEGE.*

§ 6. **Friendly—Adverse, or hostile.**—As a general rule, every witness ought, in the first instance at least, to be presumed to be favorably disposed towards the party by whom he is called, and his examination should be conducted on that theory. Sometimes, however, it happens that a party is obliged to call a witness who is unfavorable towards him, or that after a witness has been called and partly examined he develops a state of mind unfavorable to the party calling him: such a witness is called an "adverse" or "hostile witness," and his examination generally becomes more or less a cross-examination; as to this, *see DISCREDIT. Best Ev. 815 et seq.*

§ 7. **Zealous.**—A zealous witness is one who endeavors to shape his testimony so as to make it as favorable as possible for one of the parties. One of the most dangerous kinds of witness for the party calling him is a witness who "proves too much." *Best Ev. 826.*

WITNESS, (in statute of limitations). 8 Pick. (Mass.) 246.

WITNESS, (privilege of, from arrest). 2 Johns. (N. Y.) 294.

— (unless under subpoena, may be arrested when attending court). Penn. (N. J.) 516.

— (privilege of from service of process). South. (N. J.) 366.

— (under fourteen years of age, competency of, a question for the court). Penn. (N. J.) 930.

— (when subscribing, to deed, need not be called). 3 Car. & P. 555.

WITNESS MY HAND AND SEAL, (in an instrument with a scroll). 2 Serg. & R. (Pa.) 504.

WITNESS OUR HANDS AND SEALS, (in written instrument). 68 Me. 160.

WITNESS, PROSECUTING, (in a statute). 54 Ill. 356.

WITNESS TO A DEED, (when handwriting of may be proved). 2 East 250.

WITNESSED, IT IS, (in a declaration). 1 Barn. & C. 358, 363.

WITNESSES, (are not to state opinions). 47 Barb. (N. Y.) 327.

— (in act concerning appeals from justices' courts). 18 Johns. (N. Y.) 388.

WITNESSES, CREDIBLE, (in statute of wills). 9 Pick. (Mass.) 350; 23 *Id.* 10.

WITNESSING, (in statute of limitations). 16 Mass. 290.

WITNESSING PART, in a deed or other formal instrument, is that part which comes after the recitals, or, where there are no recitals, after the parties. It usually commences with a reference to the agreement or intention to be effectuated, then states or refers to the consideration, and concludes with the operative words and parcels, if any (*q. v.*) Where a deed effectuates two distinct objects there are two witnessing parts. 1 Dav. Prec. Conv. 68 *et seq.*

The witnessing part is so called because in indentures it commences with the words "This Indenture Witnesseth," meaning that the instrument is intended as a record of the transaction.

WITTENA-GEMOTE.—*See WITENA-GEMOT.*

WITTINGLY, (defined). 44 Conn. 357, 359.

WITTINGLY, WILLINGLY OR KNOWINGLY, (in a statute). 2 Barn. & Ad. 909, 914.

WOLD.—A down or open country.—*Cowell.*

WOLFESHEAD, or WOLFERHE-FOD.—The condition of such as were outlawed in the time of the Saxons, who, if they could not be taken alive to be brought to justice, might be slain, and their heads brought to the king; for they were no more accounted of than a wolf's head. Bract. 1, 3.

WOMAN.—The female of human kind. The mention of a male in a statute usually includes the female.

WOMAN, (in act defining rape). 22 Ohio St. 102.

WOMAN WITH CHILD, (synonymous with "pregnant woman"). 83 N. Y. 464.

WONG.—A field.—*Spel. Gloss.*

WOOD, (defined). 72 Me. 464.

—— (distinguished from "timber"). Yelv. 152.

WOOD AND UNDERWOOD, (in a lease). 1 Barn. & Ad. 622; Com. L. & T. 78.

WOOD, STOCK OF, (what is not). 6 Car. & P. 348.

WOOD-CORN.—A certain quantity of grain paid by the tenants of some manors to the lord, for the liberty to pick up dried or broken wood.—*Cowell.*

WOOD-GELD.—The cutting of wood within the forest, or rather the money paid for the same.—*Cowell.*

WOOD-PLEA COURT.—A court held twice in the year in the forest of Clun, in Shropshire, for determining all matters of wood and agistments.—*Cowell.*

WOODEN BLOCK PAVEMENT, (in proceedings for local improvements). 22 Minn. 494.

WOODEN BUILDING, (in a lease). 100 Mass. 117.

WOODLAND, (a devise of). 1 Serg. & R. (Pa.) 169.

WOODMOTE.—The forty-days' court (*q. v.*)

WOODS, (what constitutes). 5 Jones (N. C.) L. 3.

—— (in a lease). 3 Bulst. 290; 1 Leon. 49.

WOODS AND FORESTS.—*See* COMMISSIONER, p. 236, *n.*

WOODS AND UNDERWOODS, (what are). 1 Chit. Gen. Pr. 183.

—— (exception of, in a lease). 5 Co. 11, 12; 1 Saund. 323, *n.* (i).

WOODS, GROWING, (a grant of all salable, does not pass the soil). Cro. Jac. 524.

WOODS, TIMBER, TREES AND GREAT, (an exception of, in a lease). 1 Dyer 79a.

WOODS, UNDERWOODS, COPPICHS AND HEDGEROWS, (an exception of, in a lease). 2 Cro. 487.

WOODWARDS.—Officers of the forest, whose duty consists in looking after the wood and vert and venison, and preventing offenses relating to the same. Manw. 189.

WOOL, ALL SORTS OF, (in a statute). 1 Holt 69.

WOOLEN GOODS, (in United States customs law). 10 Pet. (U. S.) 152.

WOOLSACK.—The seat of the lord chancellor in the House of Lords. When, in the reign of Elizabeth, an act of parliament was passed to prevent the exportation of wool, to keep in mind this source of our national wealth, woolsacks were placed in the House of Lords, whereon the judges sat.—*Wharton.*

WORDS.—*See* DEFAMATION.

WORDS, (effect of general, in a will). 1 Coll. 156.

WORDS AND MATTERS FOLLOWING, (in a declaration for libel). 2 Car. & P. 307.

**WORDS OF LIMITATION—
WORDS OF PROCREATION—
WORDS OF PURCHASE.**—

§ 1. **Words of limitation.**—In a conveyance or will, words which have the effect of marking the duration of an estate are termed words of limitation. (*See* LIMITATION, § 1.) Thus, in a grant to A. and his heirs, the words "and his heirs" are words of limitation, because they show that A. is to take an estate in fee-simple, and do not give his heirs anything. (Ferne Rem. 78.) In a deed executed, in England, after the 31st December, 1881, it is sufficient, in the limitation of an estate in fee-simple, to use the words "in fee-simple," without the word "heirs." Conveyancing Act, 1881, § 51.

§ 2. **Words of procreation.**—To create an estate tail by deed, it is necessary that words of procreation should be used in order to confine the estate to the descendants of the first grantee, as in the usual form of limitation—"to A. and the heirs of his body." Hence, a limitation to A. and his heirs male would not create an estate tail, for want of words of procreation. In a deed executed, in England, after the 31st December, 1881, it is sufficient to use the words "in tail" without the words "heirs of the body." Conveyancing Act, 1881, § 51.

§ 3. **Words of purchase.**—Words of purchase are words which denote the person who is to take the estate. Thus, if I grant land to A. for twenty-one years, and after the determination of that term to A.'s heirs, the word "heirs" does not denote the duration of A.'s estate, but the person who is to take the remainder on the expiration of the term, and is therefore called a "word of purchase." (Wms. Real Prop.; Ferne Rem. 76 *et seq.*)

Hence, "words of purchase" and "words of limitation" are opposed to one another. (See PURCHASE; SHELLEY'S CASE.) But there are cases in which words operate partly as words of purchase, and partly as words of limitation. Thus, if an estate is limited to the heirs of the body of A., A. being dead, these words are words of purchase to the extent that they give the estate to the person who fills the character of heir of the body of A. (e. g. his eldest son B.) by purchase and not by descent; but as they also have the effect of giving B. an estate tail, they are to this extent words of limitation. Fearn 80; Co. Litt. 26b.

WORDS TO THE SAME EFFECT, OR IN, (in a statute). 2 Chit. Gen. Pr. 209.

WORKHOUSE.—In English law, a building for the accommodation of paupers in a parish or union. See POOR LAW; VESTRY.

WORKINGMEN'S CLUBS are societies established and registered under the English Friendly Societies Act, 1875, (Section 8, § 4,) for purposes of social intercourse, mutual helpfulness, mental and moral improvement and rational recreation. According to the fourth report of the commissioners on friendly societies, the members of these clubs "meet and read newspapers, and have lectures and tea and coffee, and sometimes beer." P. cxlvii. See FRIENDLY SOCIETIES.

WORKMEN.—See COMMON EMPLOYMENT; MASTER AND SERVANT; TRADE UNIONS; TRUCK ACT.

WORKSHOPS.—See FACTORIES.

WORSHIP.—A title of respect applied to a magistrate.

WORT, or WORTH.—A curtilage or country farm.

WORTHINE OF LAND.—A certain quantity of land, so called in the manor of Kingsland in Hereford; the tenants are called "worthies."

WORTHS, VALUES, (in a statute). 3 Barn. & C. 516.

WOUND.—Any lesion of the body, whether cut, bruise, contusion, fracture, dislocation, or burn. In surgery it is confined to a solution of continuity in any part of the body suddenly caused by anything that cuts or tears with a division of the skin.

The judicial questions which arise in cases of wounding (which is an aggravated

species of battery) where death ensues are: How far has the person who caused the injury contributed to the death of the deceased, or to the lesion of the functions of the body? And to what is a certain wound to be referred? Circumstances as well as accident have a considerable effect on wounds: (1) The constitution and age of the patient, and his antecedent as well as co-existent maladies may exercise a baneful influence on the injury received. (2) The passions of the patient, and his negligence or delay, or that of his attendants, may render slight wounds dangerous, or dangerous wounds mortal. (3) Insalubrity of the atmosphere. (4) The ignorance or negligence of the surgeon may aggravate or endanger the condition of a wounded patient. Beck Med. Jur. c. xv. See MAYHEM; and 3 Steph. Com. (7 edit.) 373; 4 Id. 81.

WOUNDING AND MAIMING, as civil offenses, are merely aggravated forms of battery (q. v.) Underh. Torts 120. See MAYHEM.

§ 2. As to felonious wounding and maiming, see MALICIOUS INJURIES TO THE PERSON; MAYHEM.

Wreccum maris significat illa bona quæ naufragio ad terram pelluntur: A wreck of the sea signifies those goods which are driven to shore from a shipwreck.

WRECK.—

§ 1. **Common law.**—By the common law, if a ship was lost at sea, and the cargo, or a portion of it, came to land, the goods saved belonged to the crown under the name of the wreck. See PREROGATIVE, § 2.) This privilege was frequently granted to lords of manors. (See FRANCHISE, § 2; MANOR.) The strictness of the prerogative right to wreck was relaxed by early charters and statutes, under which the owners of shipwrecked goods were allowed to reclaim them within a year and a day, if they could identify them. 1 Bl. Com. 290; Stats. 3 Edw. I. c. 4; 27 Edw. III. c. 13; see *Shepherd v. Kottgen*, C. P. D. 578.

§ 2. **Modern law.**—At the present day, "wreck" includes not only wreck at common law, but also jetsam, flotsam, ligan and derelict (q. v.); and statutory provision has been made for the appointment of officers whose duty it is to preserve wreck

until it is claimed by the owner, or, if he does not claim it within a year, then to sell it and pay the proceeds into the treasury.

§ 3. Provision has also been made for rewarding those persons by whose labor and enterprise shipwrecked property has been saved, and for holding investigations as to wrecks and casualties. (See WRECK COMMISSIONERS.) In England, all these matters are under the general superintendence of the board of trade. Maude & P. Mer Sh. 504 *et seq.*; Merchant Shipping Act, 1854, § 477 *et seq.*

§ 4. Criminal law.—The Statutes 24 and 25 Vict. cc. 96, 100, and U. S. Rev. Stat. § 5358, provide for the punishment of offenses in respect of wrecks.

WRECK COMMISSIONERS are persons appointed by the English lord chancellor under the Merchant Shipping Act, 1876, (§ 29,) to hold investigations at the request of the board of trade into losses, abandonments, damages and casualties of or to ships on or near the coast of the United Kingdom, whereby loss of life is caused.

WRECKFREE.—Exempt from the forfeiture of shipwrecked goods and vessels to the king.—*Cowell.*

WRIT.—

§ 1. A writ is a document in the name and under the seal of the government, a court or an officer of the government, commanding the person to whom it is addressed to do or forbear from doing some act. As to the issue and service of writs, see **ISSUE**, § 11; **SERVICE**, § 8 *et seq.*

Writs are of two principal kinds—prerogative and of right.

§ 2. **Prerogative writs** are so called because they are issued by virtue of the sovereign's prerogative, and not as part of the public administration of justice; writs belonging to the latter class are called "writs of right," because the sovereign is bound by *Magna Charta* to issue them, while prerogative writs are granted at the discretion of the court, and only on a *prima facie* case being shown. The writs of *mandamus*, *procedendo*, prohibition, *quo warranto*, *habeas corpus* and *certiorari*, are

prerogative writs. (3 Bl. Com. 132; 3 Steph. Com. 629; Reg. v. Churchwardens of All Saints, Wigan, 1 App Cas 611. See the titles.) There are also statutory writs of *mandamus* (*q. v.*), which are grantable as a matter of right, and in America the writ of *habeas corpus* is grantable, in the first instance, as a matter of right, subject to the power of the government to suspend the granting of it in cases of extreme exigency.

Writs of right are of two kinds—original and judicial. Co. Litt. 73b.

§ 3. **Original writs.**—An original writ was anciently the mode of commencing every action at common law. It issued out of the common law side of the Chancery, and was under the great seal. To avoid the expense of original writs, other modes of beginning actions were devised with the connivance of the courts; but they were all abolished in England, and the modern writ of summons introduced by the Stat. 2 and 3 Will. IV. c. 39. (3 Steph. Com. 489.) Original writs, however, continued some time longer to be used as modes of appealing from one court to another (as in the case of writs of error, writs of false judgments, &c.,) (Arch. Pr. 478); but the only one now existing appears to be the writ of error. See **WRIT OF ERROR**.

§ 4. **Judicial writs.**—A judicial writ seems to be any writ which is issued by a court under its own seal, as opposed to an original writ.* Judicial writs may be divided into—(1) writs originating actions and other proceedings, of which the ordinary writ of summons (*q. v.*) is the commonest instance; (2) interlocutory writs, issued during the course of an action before final judgment, such as writs of inquiry, *mandamus* and recaption, and writs for enforcing obedience to interlocutory orders by attachment, sequestration, &c.; (3) writs of execution.

§ 5. **Writs of execution.**—Writs in aid.—Writs of execution are of two kinds: some are issued in the first instance, (*e. g.* writs of *fieri facias*, *elegit*, sequestration,

* Coke says that "writs of execution are called judicial because they are grounded upon the judgment." (Co. Litt. 289 a.) No doubt writs of execution are judicial, but not for the reason

stated, which appears to be one of the many cases where Coke's etymological guesses have misled him.

delivery, possession, *levari facias*, &c. ;) while others are only issued in aid of other writs, *i. e.* when a writ of execution has been issued without producing the desired effect; such are writs of *venditioni exponas*, *distringas nuper vicecomitem, fi. fa. de bonis ecclesiasticis*, *sequestrari fa. de bonis eccl.*, and the writ of assistance. See the various titles.

§ 6. "Writ"—"Action."—In the old books, "writ" is used as equivalent to "action;" hence writs are sometimes divided into real, personal and mixed. See ACTION, § 15.

As to *alias* and *pluries* writs, see those titles. See, also, DETAINER; EXECUTION, § 3; MANDATORY; RETURN; TESTATUM; TESTE.

WRIT OF ASSISTANCE.—In England, where a writ of sequestration (*q. v.*) has been issued, and the commissioners are unable to obtain possession of the property to be sequestered, the court may order a writ of assistance to issue, commanding the sheriff to put them in possession. (Dan. Ch. Pr. 917, 923.) The other kind of writ of assistance (Dan. 923) seems to have been superseded in England by the writs of possession and delivery under Orders xlviii., xlix. In America a writ of assistance is a writ issuing out of Chancery to aid or assist the sheriff in giving possession of lands pursuant to an execution upon a judgment at law for recovery of possession.

WRIT OF ATTACHMENT.—A writ employed to enforce obedience to an order or judgment of the court. It commands the sheriff to attach the disobedient party and to have him before the court to answer his contempt. (Sm. Ac. 176.) It is used not only as a writ of execution (*e. g.* to enforce a judgment for the recovery of chattels, or a judgment requiring any person to do or abstain from doing any specific act), but also to enforce obedience to interlocutory orders, injunctions, &c., and the performance of undertakings (*q. v.*)

WRIT OF DELIVERY.—A writ of execution employed to enforce a judgment for the delivery of chattels. It commands the sheriff to cause the chattels mentioned in the writ to be returned to the person

who has obtained the judgment; and if the chattels cannot be found, to distrain the person against whom the judgment was given until he returns them. Sm. Ac. 175.

WRIT OF DOWER.—Under the old common law practice, when a widow had no dower assigned to her within the proper time, she had a remedy by "writ of dower *unde nihil habet*." If she had only part of her dower assigned to her, she had a remedy by "writ of right of dower," which was a general remedy also applicable to the case of no dower being assigned. (3 Bl. Com. 182.) These forms of real action were abolished in England by the Common Law Proc. Act, 1860, and the ordinary form of action substituted. See ACTION, § 15.

WRIT OF ENTRY.—A real action to recover the possession of land where the tenant (or owner) has been disseised or otherwise wrongfully dispossessed. If the disseisor has aliened the land, or if it has descended to his heir, the writ of entry is said to be in the *per*, because it alleges that the defendant (the alienee or heir) obtained possession *through* the original disseisor. If two alienations (or descents) have taken place, the writ is in the *per* and *cui*, because it alleges that the defendant (the second alienee) obtained possession *through* the first alienee, to *whom* the original disseisor had aliened it. If more than two alienations (or descents) have taken place, the writ is in the *post*, because it simply alleges that the defendant acquired possession *after* the original disseisin. (Co. Litt. 238b; 3 Bl. Com. 180.) The writ of entry was abolished, with other real actions in England, by Stat. 3 and 4 Will. IV. c. 27, § 36, but is still in use in a few of the States of the Union.

WRIT OF ERROR.—

§ 1. Criminal practice.—In criminal cases, a writ of error is a writ issuing from an appellate court, and directed to an inferior court, requiring them to send the record and proceedings on an indictment in which judgment has been pronounced, to the appellate court for review. It lies for every substantial defect appearing on the record for which the indictment might

have been quashed, or which would have been fatal on demurrer, or in arrest of judgment, provided such defect is not cured by verdict; thus, it lies on an indictment for perjury in which it does not appear that the alleged false oath was taken in a judicial proceeding. (*See* AID, § 2; ARREST OF JUDGMENT; DEMURRER; QUASH.) It also lies to reverse an outlawry. Arch. Cr. Pl. 196 *et seq.*, where the formalities are detailed; Pritch. Quar. Sess. 349; *Bradlaugh v. Reg.*, 3 Q. B. D. 607.

§ 2. In civil cases.—In some of the States the writ of error is the mode by which appeals from certain inferior courts of record (proceeding according to the course of the common law) are brought to the court of last resort. *See* ERROR; WRIT OF FALSE JUDGMENT.

WRIT OF FALSE JUDGMENT.—A writ which appears to be still in use to bring appeals to the English High Court from inferior courts not of record proceeding according to the course of the common law. Arch. Pr. 1427. *See* ERROR.

WRIT OF INQUIRY.—One of the modes of assessing damages when interlocutory judgment (*e. g.* by default or on demurrer) has been obtained by the plaintiff in an action for unliquidated damages. It is usually executed by the sheriff or under-sheriff and a jury of twelve, much in the same manner as an ordinary trial. When the damages have been assessed, the writ, return and inquisition are filed and final judgment signed. Arch. Pr. 807. *See* JUDGMENT, § 5; REFERENCE, § 6.

WRIT OF POSSESSION.—This is the writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment. Sm. Ac. 175. *See* EXECUTION; HABERE FACIAS POSSESSIONEM; WRIT OF DELIVERY.

WRIT OF PROTECTION.—In England, the queen may, by her writ of protection, privilege any person in her service from arrest in civil proceedings during a year and a day; but this prerogative is seldom, if ever, exercised. Arch. Pr. 687; *see* Co. Litt. 130 a.

WRIT OF RECAPTION.—If, pending an action of replevin for a distress, the

defendant distrains again for the same rent or service, the owner of the goods is not driven to another action of replevin, but is allowed a writ of recaption, by which he recovers the goods and damages for the defendant's contempt of the process of the law in making a second distress while the matter is *sub judice*. Woodf. L. & T. 484. *See* REPLEVIN.

WRIT OF RESTITUTION.—*See* RESTITUTION.

WRIT OF RIGHT.—

§ 1. In the general sense of the term, a writ of right is one which is grantable as a matter of right, as opposed to a prerogative writ, which is issued only as a matter of grace or discretion. *See* WRIT, § 2.

§ 2 **Real property.**—In the old real property law (still in force in a few of the States), a writ of right was a real action which lay to recover lands in fee-simple, unjustly withheld from the owner. It might be brought in any case of disseisin, but was in practice only used where the disseisee had lost his right of entry or right to the possession, as in other cases a possessory action (such as a writ of entry) was more convenient. It was called a "writ of right," because it was brought to assert the right of property remaining in the owner, which, as already mentioned, was usually a mere right. *See* RIGHT, § 10.

§ 3. There were also writs in the nature of writs of right, such as the writ of right of dower. 3 Bl. Com. 193. *See* WRIT OF DOWER.

WRIT OF SEQUESTRATION.—*See* SEQUESTRATION, § 2; WRIT OF ASSISTANCE.

WRIT OF SUMMONS.—

§ 1. **High Court.**—In ordinary actions in the English High Court, the writ of summons is a writ issued at the instance of the plaintiff for the purpose of giving the defendant notice of the claim made against him and of compelling him to appear and answer it if he does not admit it. It is the first step in the action. *See* ACTION, § 2.

§ 2. **Body of writ—Memoranda—Indorsements.**—The writ consists of the body, the memoranda and the indorsements. (Sm. Ac. 44.) The body contains the "title" (*i. e.* the reference to the record, the name of the court, division and judge if required, and the names of the parties (*see* TITLE, § 10)), the mandatory part (by which the defendant is ordered

to enter an appearance), and the teste (*q. v.*) The memoranda specify the time within which the writ must be served and the place where the defendant may enter an appearance. The indorsements are of four kinds: First, the indorsement of claim, being a brief statement of the nature of the plaintiff's claim. (Rules of Court, ii. 1, iii. 2.) When the plaintiff's claim is for a debt or liquidated demand, the indorsement of claim must state the amount thereof and the amount claimed for costs, and state that upon payment of both within a certain time further proceedings will be stayed. (*Id.* iii. 7.) Secondly, the special indorsement, which may be employed where the plaintiff's claim consists of a debt or liquidated demand. It gives the particulars of the amount (*Id.* iii. 6), and shows how it is arrived at. Thus, in an action for money lent the special indorsement would give the amount of the loan, the arrears of interest and any repayments made on account, and would claim payment of the balance. The principal object of the special indorsement is to enable the plaintiff to obtain "judgment under Order XIV." (*See* JUDGMENT, § 9.) Thirdly, the indorsement of address, giving the name and address of the plaintiff and his solicitor, with an address for service if necessary. Fourthly, the indorsement of service made by the person who serves the writ.

§ 3. *Miscellaneous indorsements.*—In addition to these indorsements there are others used in special cases. Such are the indorsement that the plaintiff sues or that the defendant is sued in a representative capacity (Rules of Court, iii. 4), (*e. g.* as executor); that the plaintiff claims to have an account taken in the first instance (*i. e.* immediately after appearance), (*Id.* iii. 8; *Sm. Ac.* 50), &c., and in probate actions, the indorsement of the character in which the plaintiff claims (*e. g.* as next of kin, creditor, executor, &c.) *Id.* iii. 5.

§ 4. *In admiralty actions in rem* the writ of summons is in a special form; it is addressed to the owners of the ship or other property, authorizes the marshal to arrest the ship, and commands the owners to enter an appearance. *See* ACTION, § 12.

§ 5. A writ of summons is issued at the central office of the Supreme Court. (*See* ISSUING OFFICE, § 11; CENTRAL OFFICE.) As to its service, *see* SERVICE, § 8 *et seq.*

§ 6. *Renewal of writ.*—A writ remains in force for twelve months from its issue, but if service has not been effected within that time it may (if a judge so orders) be renewed for six months, by being sealed by the proper officer. Rules of Court, viii.

§ 7. *Concurrent writs.*—If there are several defendants to be served, or the whereabouts of a defendant is doubtful, or some similar reason exists, one or more concurrent writs (*i. e.* writs to the same effect as the original writ and remaining in force for the same time) may be issued, so as to facilitate service. Rules of Court, vii.

§ 8. *Probate practice.*—The Court of Probate had power to cause questions of fact, arising in suits or proceedings, to be tried by a

jury by means of an issue directed to one of the superior courts of law; the issues were contained in a document called a "writ of summons." (Browne Prob. Pr. 314; Court of Probate Act, 1857, § 35.) This practice seems no longer applicable. Rules of Court, xxxvi. 29.

WRITER OF THE TALLIES.—An officer of the Exchequer, who acted as clerk to the auditor of the receipt, who wrote upon the tallies the teller's bills.

WRITERS TO THE SIGNET.—(Abbreviated W. S., also called "clerks to the signet"). A legal body who perform, in the Supreme Courts of Scotland, duties analogous to those of the attorney and solicitor in England. They have various privileges, particularly as to the signeting (sealing) of summonses, the issuing of warrants of imprisonment, &c. *See* further, *Bell Dict., voc. CLERK TO THE SIGNET*, and 31 and 32 Vict. c. 100.

WRITING—WRITTEN.—

§ 1. *Written—Verbal.*—In the most general sense of the word, "writing" denotes a document, whether manuscript or printed, as opposed to mere spoken words. Writing is essential to the validity of certain contracts and other transactions (as to which, *see* BILL OF EXCHANGE; CONTRACTS, § 4; COPYRIGHT, § 8; PATENT RIGHT; STATUTE OF FRAUDS; TENDERDEN'S ACT; WILL); while some legal transactions require the additional formality of a deed (*q. v.*) As to written and spoken defamation, *see* LIBEL; SLANDER; SEDITION. As to written evidence, *see* EVIDENCE, § 8.

§ 2. *Written—Printed.*—Writing is sometimes opposed to printing. Thus, in the practice of the English High Court, pleadings not exceeding ten folios in length may be written or printed, while those exceeding that length must be printed.

§ 3. *Written—Parol.*—In the old books, "writing" sometimes signifies a "writing sealed," *i. e.* a deed, as opposed to "parol" (*q. v.*) *Shep. Touch.* 52; *Co. Litt.* 36a.

WRITINGS OBLIGATORY.—Bonds. *See* BOND.

WRITS FOR THE ELECTION OF MEMBERS OF PARLIAMENT.—The speaker of the House of Commons is empowered to issue warrants, during any recess of the house, for making out new writs for the election of persons in the room of members accepting certain offices. *See* 24 Geo. III. c. 26; 58 Geo. III. c. 144; 21 and 22 Vict. c. 110, and 26 Vict. c. 20.

WRITS OF EXECUTION.—See EXECUTION.

WRONG is that which takes place when a right is violated or infringed. Wrongs are generally divided into private and public. A private wrong is one which confers a remedy or right of redress on an individual; such are breaches of contract, torts, &c. A public wrong is one which renders the wrong-doer responsible to the community; such are crimes (1 Bl. Com. 122) and other offenses (*q. v.*), and gener-

ally all infringements of the rules of public law. See LAW, § 6.

As to estates or titles by wrong, see TITLE, § 2.

WRONG-DOER.—One who commits an injury; a *tort-feasor*.

WRONGFULLY, (implies malice). 1 East 563.
WRONGFULLY CLAIMING, (in a statute). L. R. 12 Eq. Cas. 149.

WRONGOUS IMPRISONMENT.—In the Scotch law, false imprisonment.

WYTEL.—See WITE.

X.

XENODOCEUM, or **XENODOCHEUM.**—An inn; an hospital.—*Cowell*.

XENODOCHY.—Reception of strangers; hospitality.—*Encycl. Lond.*

XYLON.—A punishment among the Greeks answering to our stocks.

Y.

YACHTS are vessels navigated solely for purposes of pleasure. The provisions of the English Merchant Shipping Acts with regard to discipline, supply of medicine, and some other matters, apply to sea-going yachts. (Mer. Sh. Act, 1854, § 109; Act of 1862, § 13; Maude & P. Mer. Sh. (4 edit.) 186 *et seq.*) Yachts not exceeding fifteen tons do not require to be registered (Mer. Sh. Act, 1854, § 19), except for the purpose of taking advantage of the privileges granted by the admiralty to certain yacht clubs. Yachts belonging to the principal yacht clubs are exempted from the obligation of having their names and other particulars painted on them. Regulations of board of trade under Merchant Shipping Act, 1872; 2 Maude & P. Mer. Sh. 320, *n.* (o).

YARD.—See CURTLAGE.

YARD, (in a deed). 1 Chit. Gen. Pr. 176.

YARDLAND, or *virgata terra*, is a quantity of land, said by some to be twenty acres, but by Coke to be of uncertain extent. See PLOUGH-LAND.

YARDLAND, (what is). Shep. Touch. 93.

YEA AND NAY.—Yes and no; according to a charter of Athelstan, the people of Ripon were to be believed in all actions or suits upon their yea and nay, without the necessity of taking any oath.—*Brown*.

YEAR.—A year consists of twelve calendar months; *i. e.* 365 days in ordinary years, and 366 days in leap-year. By the Stat. 21 Hen. III. (40 Hen. III. in the Statutes of the Realm) the increasing day in the leap-year, as well as the preceding day, are accounted for one day only. The 1st January is the first day of the year by Stat. 24 Geo. II. c. 23; before that enactment the 25th March was the first day of the year. Co. Litt. 135a; 2 Bl. Com. 140.

See TIME. As to leases for years, see LEASE; TENANT FOR YEARS; TERM, § 1.

YEAR, (what is). 6 Co. 62.
— (how computed). 1 Com. Dig. 627.
— (how many days constitute). 2 Bl. Com. 140 and note; Cro. Jac. 166.
— (in a contract). 73 Ind. 54.
— (in a statute). 25 Miss. 598.
— (in companies act). L. R. 10 Q. B. 329.
— (in settlement act). Penn. (N. J.) 422.
— (in a complaint, will be construed "year of our Lord"). 47 Me. 388.
— (of issuing process, record should state). Penn. (N. J.) 879.
— (omission in an indictment). 22 Minn. 67.
— (parol lease for more than three, operated as a lease from year to year). 8 T. R. 3.

YEAR AND DAY.—

§ 1. The owners of estrays (*q. v.*) must claim them within a year and a day, otherwise they belong to the sovereign, or his grantee. As to wreck, *see* that title; *see, also*, CONTINUAL CLAIM.

§ 2. In order to make killing murder, it is requisite that the party die within a year and a day after the stroke received, or cause of death administered; in the computation of which the whole day upon which the hurt was done shall be reckoned the first. 4 Bl. Com. 197.

YEAR, AND SO FROM YEAR TO YEAR, (a lease for a). 6 Mod. 215; 1 Ld. Raym. 280.

YEAR, ANY ONE, (in act relating to salaries of receivers). 15 Pet. (U. S.) 160.

YEAR, AT THE END OF YOUR CURRENT, (in notice to tenant to quit). 4 Dowl. & Ry. 248.

YEAR-BOOKS are the reports of cases in the superior courts of common law from the reign of Edward II. to that of Henry VIII. They were taken by the prothonotaries or chief scribes of the court at the expense of the crown, and published annually, whence their name. 1 Bl. Com. 71. *See* REPORT, § 5.

YEAR, DAY AND WASTE, in the law of forfeiture (*q. v.*, § 7), is the right which the crown had to hold the lands of felons for a year and a day, and to pull down the houses, cut down the woods and commit other waste thereon. (4 Bl. Com. 385.) This right was restricted by Stat. 54 Geo. III. c. 145, and ceased to exist (except on attainder for treason), when forfeiture was abolished.

YEAR, DAY AND WASTE, (what is the king's). Chit. Prerog. 219.

YEAR OF OUR LORD, (omission of, in an indictment). 14 Gray (Mass.) 39.

YEAR, ONE, (what is not within). 11 Iowa 11.

YEAR, QUARTER OF A, (what is). Dyer 345 n.

YEAR TO YEAR.—*See* TENANT FROM YEAR TO YEAR.

YEAR TO YEAR, (who is tenant from). 4 Rawle (Pa.) 123; 9 Serg. & R. (Pa.) 87; 6 Wheel. Am. C. L. 388; 2 W. Bl. 1173; 1 Chit. Gen. Pr. 256.

YEAR TO YEAR SO LONG AS BOTH PARTIES SHALL PLEASE, (a lease from). 1 Ld. Raym. 707; 3 T. R. 13.

YEARLY, (defined). 5 Barn. & A. 363.

YEARLY AND EVERY YEAR, PAYING, (in a devise). 5 T. R. 13.

YEARLY MEETING AND THEIR SUCCESSORS, (a devise to the). 6 Conn. 292; 4 Wheel. Am. C. L. 373.

YEARLY, QUARTER, (interest payable, is not usury). 5 Paige (N. Y.) 98.

YEARLY RENT, (in a lease). Co. Litt. 47 a.

YEARS, (what is a lease for). 5 Binn. (Pa.) 228; Amb. 329; Com. L. & T. 91.

YEARS, (parol lease for three, to commence in future is void). 12 Mod. 610.

— (lease for ninety-nine). 5 Wheel. Am. C. L. 250.

— (tenant for). 2 Campb. 453; Com. L. & T. 348.

YEARS AFTER DEMAND, (a promissory note payable two). 8 Dowl. & Ry. 347.

YEARS, TERM OF, (in a statute). 16 Pick. (Mass.) 448.

YEARS, TWO, (equivalent to "twenty-four months"). 7 T. B. Mon. (Ky.) 257, 262.

YEAS AND NAYS.—The list of members of a legislative body voting in the affirmative and negative of a proposition.—*Bouvier*.

YELLOW, (of a horse, defined). Oliph. Hors. 108.

YHME.—Winter.—*Cowell*.

YEOMAN.—"A yeoman is he that hath free land of forty shillings by the year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act where the law requires one that is *probus et legalis homo*." Yeomen rank next after gentlemen in order of precedence. 1 Bl. Com. 406.

YEOMAN, (not equivalent to "horner"). 8 Mod. 51, 52.

— (in a lease). Dyer 46, 47.

YEOMANRY.—The collected body of yeomen.

YEOMANRY CAVALRY.—A denomination given to those troops of horse which were levied among the gentlemen and yeomen of the country, upon the same principle as the volunteer companies. *See* 44 Geo. III. c. 54; 23 Vict. c. 13; 1 Br. & Had. Com. 496; and 2 Steph. Com. (7 edit.) 617; 3 *Id.* 86 n., 140 n.

YEOMEN OF THE GUARDS.—Properly called "yeomen of the guard of the royal household;" a body of men of the best rank under the gentry, and of a larger stature than ordinary, every one being required to be six feet high.—*Encycl. Lond.* As to their establishment, *see* 2 Hallam Const. Hist. c. ix.

YET NEVERTHELESS SO THAT, (in a statute). Str. 519.

YEVEN, or YEOVEN.—Given; dated.—*Cowell*.

YIELD, in the law of real property, is to perform a service due by a tenant to his lord. Hence the usual form of reservation of a rent in a lease begins with the words "yielding and paying." *See* RENDER.

YIELDING AND PAYING.—The first words of the *reddendum* clause in a lease.

YIELDING AND PAYING, (when will make a covenant). 1 Bing. 433; 1 *Sai. ud.* 241 c. n. (d); 3 *T. R.* 402.

—— (in a covenant). 9 *Ves.* 330.

—— (in a deed). 3 *Pa.* 465.

—— (in a lease). *Com. L. & T.* 210, 211; 9 *Vt.* 191.

YIELDING AND RENDERING, (in a lease). 9 *N. Y.* 9.

YOKE OF OXEN, (in exemption statute). 16 *Kan.* 293.

YOKELET.—A little farm, requiring but a yoke of oxen to till it.

YORKSHIRE LAND REGISTRIES.—These are regulated by Stats. 2 and 3 *Anne* c. 4; 5 *Anne* c. 18 (6 *Anne* c. 20, in the Statutes of the Realm), as to the West Riding; 6 *Anne* c. 35 (or 62), as to the East Riding, and 8 *Geo.* II. c. 6. *See* **LAND REGISTRIES**, § 6; **MEMORIAL**, § 1.

YOU, (in a commission). 1 *Munf. (Va.)* 247, 252.

—— (in a summons). 2 *Dowl. P. C.* 145.

YOU, TO BE DIVIDED AMONGST, (in a devise). 3 *Ves. & B.* 54.

YOUNGER CHILD, (in a will). 8 *Com. Dig.* 472; 1 *P. Wms.* 245.

YOUNGER CHILDREN.—This phrase, when used in English conveyancing with reference to settlements of land, signifies all such children as are not entitled to the rights of an eldest son. It, therefore, includes daughters, even those who are older than the eldest son. *Mozley & W.*

YOUNGER SON OR DAUGHTER, (in a will) 5 *Cl. & F.* 398.

YOUNGEST CHILD, (in a will). 24 *Minn.* 180.

YOUTH, (in a will). 2 *Cush. (Mass.)* 528, 533.

YULE.—The times of Christmas and *Lammas*.

Z.

ZEALOT.—This word is commonly taken in a bad sense, as denoting a separatist from the Church of England, or a fanatic.—*Brown*.

ZEALOUS WITNESS.—*See* **WITNESS**, § 7.

ZETETICK.—Proceeding by inquiry.—*Encycl. Lond.*

ZIGARI, or **ZINGARI.**—Rogues and vagabonds in the middle ages; from *Zigi*, now *Circassia*.

ZOLL-VEREIN.—A union of German States for uniformity of customs. It began in

1819, by the union of Schwarzburg-Sondershausen, and, until the unification of the German Empire, included Prussia, Saxony, Bavaria, Wurtemberg, Baden, Hesse-Cassel, Brunswick, and Mecklenburg-Strelitz, and all intermediate principalities. This union has now been superseded by the formation of the new German Empire; and the Federal Council of the Empire has taken the place of the Federal Council of the *Zoll-verein*.—*Wharton*.

ZYGOSTATES.—The clerk of a market, who examines the weights and measures; a scalesman.—*Spel. Gloss.*

APPENDIX.

In the alphabetical arrangement of the ADJUDGED WORDS AND PHRASES throughout the dictionary, it was frequently found necessary to transpose the words of a phrase in order to insert it in the alphabetic position called for by the most important word in it, *i. e.* the word upon the meaning of which, in its connection with the remainder of the phrase, the construction given by the court was based.

Below is a list of such phrases in their original form, the words printed in SMALL CAPITALS indicating their position in the body of the work. Thus, "All ACTIONS now depending," will be found under "ACTIONS, ALL NOW DEPENDING."

These transposed phrases form but an insignificant portion of the *thirty-five or forty thousand* words and phrases embraced, but their number is sufficiently large to warrant a table of cross-references showing their actual position.

A. B. and ANOTHER.	All and singular my EFFECTS.	All my MESSAGES.
A bark on the stocks.	All and whatsoever TENEMENTS he hath.	All my MONEY.
A certain part of a stream of WATER.	All DEBTS.	All my NEPHEWS and nieces.
A COMMITTEE.	All DEBTS due to me.	All my personal and landed ESTATES.
A CONVOY.	All DEMANDS.	All my personal ESTATE.
A good DRAWER.	All farming STOCK.	All my PROPERTY.
A. MADE the note.	All FAULTS.	All my ready MONEY.
A majority of the VOTERS of the county.	All his ESTATE.	All my real and personal ESTATE.
A purely PUBLIC CHARITY.	All his ESTATE, whether real or personal.	All my real ESTATE.
Abandoning DEBTOR.	All his LANDS not before devised.	All my real PROPERTY.
Absent from the STATE.	All his NOTES of hand.	All my RIGHT.
Absolute DISSOLUTION.	All his other LANDS.	All my SUBSTANCE.
Absolute SALE.	All his PROPERTY.	All my temporal ESTATE.
Accidental COLLISION.	All his ready MONEY.	All my worldly GOODS.
Accommodating TERMS.	All his real and personal ESTATE.	All other chattel PROPERTY.
Accommodation NOTE.	All his REAL ESTATE.	All OTHER metals.
Account on DEMAND.	All in remainder of my PROPERTY.	All other PERIL.
Accounts between MERCHANT and merchant.	All LAND.	All other unburied GOODS and chattels.
Act of BANKRUPTCY.	All LANDS.	All previous ORDERS.
Actionable MISREPRESENTATION.	All lawful QUESTIONS.	All sorts of WOOL.
Actual DAMAGES.	All my ACCOUNTS.	All SUCH issue.
Actual FRAUD.	All my clothes and LINEN.	All the ESTATE.
Actual KNOWLEDGE.	All my EFFECTS.	All the household FURNITURE.
Actual MILITARY service.	All my ESTATE.	All the money ON hand.
Actual NOTICE.	All my ESTATE, both real and personal.	All the OBLIGATIONS for money due to him.
Actual OCCUPANT.	All my ESTATE, in law and equity.	All the residue of my GOODS.
Actual or potential ASSIGNMENT.	All my ESTATES.	All the REST.
Actual POSSESSION.	All my FARM.	All the rest and RESIDUE.
Actual RESIDENCE.	All my freehold MESSAGE.	All the rest and residue of my ESTATE.
Actual SETTLER.	All my freehold PROPERTY.	All the rest of his MONEY.
Actually OCCUPY.	All my GOODS.	All the rest of his ready MONEY.
Adverse POSSESSION.	All my HEIRS.	All the rest of my ESTATE.
Adjoining, CONTIGUOUS.	All my household goods and FURNITURE.	All the rest of my worldly GOODS.
Adjust all CONCERNS.	All my INTEREST.	All the rest, residue and remainder of my EFFECTS.
Administrators or ASSIGNS.	All my land and ESTATE.	All the said ESTATES.
Affirmative STATUTE.	All my LANDS.	All things before UNBURIED.
After PAYING my debts.	All my LANDS and tenements wherever situated.	All TREES.
After PAYMENT of my just debts and funeral expenses.	All my legal DEBTS.	All WARRANTS.
After SETTLING.		All WAYS, passages, easements
After the DEMISE.		
All ACTIONS now depending.		

<p>All ways thereunto appertain- ing. All wood and UNDERWOOD. Along its ROUTE. An institution of purely PUBLIC CHARITY. An intended WAY. Ancient WINDOWS. And as to my worldly SUB- STANCE. And not OTHERWISE. And not OTHERWISE or else- where. And OTHERS. And THEREUPON. Another ACTION pending. Annuity STOCK. Any act to be PASSED in the present session. Any BANK. Any earthly PROPERTY. Any injured PERSON. Any INTEREST whatsoever. Any one YEAR. Any other PERSON. Any PERSON. Any PROPERTY. Apt TIME. Arrear RENT. Artesian WELL. As COMMITTEE. As NEARLY as possible. As now BOUND. As OCCASION might require. As OCCASION shall require. As soon as I CAN. As they SEVERALLY die. As to my worldly SUBSTANCE. At a PUBLIC HOUSE. At all TIMES. At all TIMES hereafter. At all times THEREAFTER. At, in or NEAR. At LARGE without a keeper. At LEAST. At or NEAR. At SEA. At the trial in OPEN COURT. At that TIME. At the end of your current YEAR. At their SPECIAL instance and request. Attempt to UTTER. Auction SALE.</p> <p>balance of ACCOUNT. Bank of DISCOUNT. Bank STOCK. Banking TRANSACTION. Bastard CHILD. Be deemed REAL ESTATE. Be disabled to INHERIT. Be it therefore DECLARED. Became BOUND. Became the PURCHASER. Became VACANT. Before THEY came of age. Beneficial INTEREST. Benevolent PURPOSES. Beyond the SEAS. Bill of ATTAINDER.</p>	<p>Bill of INTERPLEADER. Bill of REVIVOR. Bills of REVIEW. Bona fide PURCHASER. Bonds or other OBLIGATIONS. Breach of promise of MAR- RIAGE. Breach of the PEACE. Bring ACTIONS. British WEIGHT. Bull SPECIES. By any other MEANS. By OCCUPYING. By PRETENCE of a certain war- rant. By the COURT. By VIRTUE. By way of PENALTY.</p> <p>Calling forth the MILITIA. Capital STOCK. Chance VERDICT. Chattel MORTGAGE. Chattel PROPERTY. Chief MAGISTRATE or officer. Christian NAME. Citizen of a STATE. Civil and criminal CAUSES. Civil OFFICE. Clay MINES. Clear DAYS. Clear of all TAXES. Clear of any TAX. Coal MINES. Commercial AGENT. Commercial INTERCOURSE. Commission on PROFITS. Common BARRATOR. Common DRUNKARD. Common INN. Common LAW. Common LIBELLER. Common NUISANCE. Common SCOLD. Common SEWER. Common TOOLS. Compel and FORCE. Compound INTEREST. Concealed PISTOL. Conditional LIMITATION. Conditional PARDON. Conditional WILL. Consent to MARRY B. Constitutional TERM. Constructive CONTEMPTS. Constructive DELIVERY. Constructive FRAUD. Constructive NOTICE. Constructive POSSESSION. Contemplation of INSOLVENCY. Contingent REMAINDER. Continuing GUARANTY. Contract of SALE. Contributory NEGLIGENCE. Conventional INTEREST. Conveyance of PROPERTY. Convinced beyond REASONABLE DOUBT. Copy of ACCOUNT. Corporal IMBECILITY. Corporal OATH.</p>	<p>Corporate FRANCHISE. Corporate SEAL. County where FOUND. Court of inferior JURISDICTION. Courts of RECORD. Covenant for TITLE. Covenant of SEISIN. Covenant secured by PENALTY or forfeiture. Credible WITNESSES. Criminal CONTEMPTS. Current ACCOUNT. Current lawful MONEY. Current MONEY.</p> <p>Damage to the PERSON. Days of GRACE. De facto OFFICER. Dear WIFE. Debts now DUE and payable. Departing the REALM. Dependent CONTRACT. Dependent COVENANTS. Destroyed NOTE. Dies NON JURIDICUS. Disorder tending to SHORTEN life. Disorderly HOUSE. Domestic SERVANT. Dormant PARTNER. Double INSURANCE. Due DILIGENCE. Due EXAMINATION. Due NOTICE. Due SECURITY. Duly ADVERTISED. Duly authorized AGENT. Duly QUALIFIED. During the said TERM. Dying UNMARRIED. Dying WITHOUT issue. Dying without ISSUE.</p> <p>Each PARTY. Effectually REBUILDING AND REPAIRING. Effectually REPAIRING. Eldest CHILD. Eldest SON. Elected by the GREATER num- ber. Employed on water. Entire DAYS. Equal DIVISION. Equitable INTEREST. Equitable MORTGAGE. Equitable SET-OFF. Estate in LAND. Estate in POSSESSION. Estate of WHAT kind never. Every MOVABLE. Except his PICTURES. Except in cases of FRAUD. Excepting my outstanding DEBTS. Excessive DAMAGES. Executed CONTRACT. Executing the DIGGING. Executory CONTRACT Executory DEVISE. Executory TRUST.</p>
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Express MALICE.	General AVERAGE.	If he shall PROCURE.
Express WARRANTY.	General CHARACTER.	If he should ATTAIN.
Extension of TIME.	General ISSUE.	If one of them should DIE.
Extreme CRUELTY.	General LEGACY.	If she MARRY.
	General LETTER of CREDIT.	If they APPROVE thereof.
False BOOKS.	General LIEN.	Illicit TRADE.
False RECOMMENDATION.	General PARTNERSHIP.	Immediate ASSETS.
False REPRESENTATION.	General PROFITS.	Immediate NEIGHBORHOOD.
Family RESIDING.	General RELEASE.	Impairing obligation of CONTRACT.
Fellow SERVANTS.	General VERDICT.	Imperfect WAR.
Female HEIRS.	General WARRANTY.	Implements of GAMING.
Final AWARD.	Good and safe BILLS.	Implied MALICE.
Final DECREE.	Good and sufficient DEED.	Implied NOTICE.
Final DISPOSITION.	Good or valuable CONSIDERATION.	In a state of CULTIVATION.
Final JUDGMENT.	Good state of HEALTH.	In about three MONTHS.
Final TRIAL.	Goods SOLD.	In any other PLACE.
Fire or STORM.	Grain and other MERCHANTISE.	In case A. should die before MARRIAGE.
First and second COUSINS.	Grand-CHILDREN.	In case of DEATH.
Foot RACE.	Grant, sell and QUIT-CLAIM.	In case of either of their DEATHS.
For all PURPOSES whatever.	Great PERSONAL injury.	In case of her DECEASE.
For and during the said TERM.	Gross NEGLIGENCE.	In case they leave no CHILDREN.
For any PERSON whatever.	Growing WOODS.	In consideration of the PERFORMANCE thereof.
For any purpose of PROFIT.	Guardian by NATURE.	In default of such ISSUE.
For COLLECTION.	Guardian in SOCAGE.	In equal DEGREE.
For default of such CHILDREN.		In equal PROPORTION.
For her OWN use and benefit.		In ESSE.
For her SOLE use.		In FULL.
For her sole use and BENEFIT.	Handsome SUPPORT.	In full of DEMANDS.
For lite ONLY.	Has EXECUTED unto.	In full satisfaction of all DEMANDS.
For or relating to the sale of GOODS.	Having in POSSESSION.	In FUTURO.
For THAT whereas.	Having so DONE.	In good ORDER.
For that WHEREAS.	He shall be EXPELLED.	In his DEMESNE as of fee.
For the good of my SOUL.	Heirs of the BODY.	In his OFFICE.
For the purpose of PROSTITUTION.	Her aforesaid PART.	In lieu of PRIVILEGE.
	Her HEIRS.	In like MANNER.
	Her OWN use.	In REM.
For the space of one MONTH after return day.	Hereby GIVEN.	In sixty DAYS.
For the SPACE of two hours.	Heretofore USED.	In SUBSTANCE.
For the true and faithful OBSERVANCE and performance.	Him and his assigns FOREVER.	In SUBSTANCE as follows.
For the USE of said seminary.	His DUES.	In such MANNER.
For what may be DUE.	His OWN proper hand being thereunto subscribed.	In such MANNER and proportion, &c.
Foreign CORPORATION.	His WIFE.	In the FIELD.
Foreign JUDGMENT.	Home PROCEEDS.	In the FIRST place.
Foreign STATE.	Holding to BAIL.	In the MANNER.
Forty days shall be ALLOWED.	Household EFFECTS.	In the MEANTIME.
Fraction of a DAY.	Household FURNITURE.	In the PRESENCE.
Fraudulent SALE.	Household GOODS.	In the SERVICE.
Free FISHERY.	Householder-FREEHOLDER.	In the usual and ordinary course of trade and DEALING.
Free from all TAXES.		In their said TRADE.
Free of all TAXES.	I AGREE.	In TRUST.
Free USE.	I agree to be ANSWERABLE.	Independent CONTRACT.
Free WARREN.	I agree to be SECURITY to you.	Independent COVENANTS.
Free WHITE citizen.	I am ACCOUNTABLE.	In-door MOVABLES.
Freehold ESTATE.	I am BOUND to A.	Indorsement in BLANK.
Freehold LANDS in possession.	I BIND myself.	Inferior COURT.
From and after the PASSING of the act.	I DEVISE.	Injuries to the PERSON.
From IGNORANCE or mistake.	I give ALL.	Insolvent CIRCUMSTANCES.
From one part to the other of the FARM.	I GUARANTY.	Interest in LAND.
Full CARGO.	I hereby GUARANTY.	Interlocutory JUDGMENT.
Full COSTS.	I HOLD.	It is hereby AGREED.
Full indemnity for the TROUBLE and expense.	I promise NOT to appear.	It is my dying REQUEST.
Future ADVANCES.	I promise to PAY.	It is my wish and will.
	I WILL.	It is ORDERED.
General and qualified WARRANTY.	I WILL and bequeath.	
General and special DEPOSIT.	I will all my landed PROPERTY.	
	I will be RESPONSIBLE.	
	I will GUARANTY.	
	I will see you paid.	
	I WISH.	
	I WISH to leave.	

<p>t is STIPULATED. t is UNDERSTOOD. t is WITNESSED. t shall be LAWFUL for the court.</p> <p>Judge of RECORDS. Judgment is ORDERED. Judicial ACT. Judicial AUTHORITY. Just ALLOWANCE. Just COMPENSATION. Just DEBTS.</p> <p>Keep in ORDER. Keep, MAINTAIN. Keeping a STAND. King's HIGHWAY. Knowledge or INFORMATION.</p> <p>Landed and personal ESTATES. Lawful deed of CONVEYANCE. Lawful HEIRS. Lawful INTEREST. Lawful TITLE. Lawful TRADE. Lawfully DEMANDED. Lawfully SEISED. Leading from and UNTO. Leased TERM. Leaving no issue BEHIND HIM. Leaving ISSUE. Legal HEIR. Legal HEIRS. Legal MAJORITY. Legal MEMORY. Legal NOTICE. Legal REPRESENTATIVES. Legal RESIDENCE. Legislative ACT. Legislative HOUSE. Legitimate CHILDREN. Less than one foot high. Letter of CREDIT. Letters of MARQUE. Limitation in restraint of MARRIAGE. Limited PARTNERSHIP. Limits of the PRISON. Liquidated DAMAGES. Liquor COMPOSITION. Live and dead STOCK. Livery of SEISIN. Living ISSUE. Loan of MONEY. Lord's DAY. Lost ARTS. Lucrative OFFICE.</p> <p>Male HEIR. Male HEIRS. Marked LINE. Market PRICE. Marriage in DISPARAGEMENT. Measure of DAMAGE. Mechanical TOOLS. Mechanics' LIEN. Member of FAMILY. Mental SERVANTS. Mercantile USAGE. Military DEPARTMENTS.</p>	<p>Militia OFFICER. Mill DAM. Ministerial ACT. Moderate CORRECTION. Money actually MADE and paid. Moored in SAFETY. Most necessary RELATIONS. Mother's poor RELATIONS. Musical COMPOSITION. Mutual ACCOUNTS. Mutual COVENANTS. My ADJOINING property. My CHILDREN. My farming STOCK. My FURNITURE. My half PART. My HEIRS. My homestead FARM. My HOUSE. My late PURCHASE. My NAMESAKE. My one-half PART. My PART. My PROPERTY. My SHARE. My STOCK.</p> <p>Natural POSSESSION. Nautical DAY. Naval STATION. Navigation; COMMERCE. Nearest of BLOOD. Nearest RELATIONS. Necessary DILIGENCE. Necessary EXPENSES. Necessary IMPLICATION. Necessary TOOLS. Negligent ESCAPE. Net PROCEEDS. New STREET. Next of KIN. No bond shall be PUT IN SUIT. Non assumpsit INFRA SEX ANNOS. Not ASSIGNABLE. Not DOUBTING. Not OTHERWISE. Not PRODUCING. Not to CONTINUE his suit. Not to DEPART until discharged. Not to PROCEED. Notice of INSOLVENCY. Notorious POSSESSION. Now in the OCCUPATION of A. Now so PAID. Nuncupative WILL.</p> <p>Of full AGE. Of the BLOOD. Of the COUNTY. Of the residue of testator's PROPERTY. Of the whole BLOOD. Of which I APPROVE. Offices of PROFIT. On OATH. On the HARBOR. On their AFFIRMATIONS. Once a WEEK. Once a week for three WEEKS. Once each week for three WEEKS.</p>	<p>One YEAR. Open and running ACCOUNT. Open current ACCOUNT. Open place, key or WHARF. Or any thing WHATSOEVER used in manuring land. Or in WORDS to the same effect. Or other PUBLIC PLACE. Order of FILIATION. Ordinary bank DEPOSIT. Ordinary DILIGENCE. Ordinary NEGLIGENCE. Other ALLOWANCES. Other ARTICLES. Other CONSIDERATIONS. Other EFFECTS. Other PERSON. Other PROCEEDINGS. Other proper and reasonable POWERS. Other public MINISTER. Other real HEREDITAMENTS. Other STOCK. Other SUBSTANCE.</p> <p>Paid THEREOUT. Parish and ward OFFICERS. Parol GIFT. Parol GRANT. Parol LEASE. Part PERFORMANCE. Partial DEDICATION. Pay to B. or his order for my USE. Paying THEREOUT. Paying YEARLY and every year. Pecuniary LEGACY. Perfect WAR. Peril of the SEA. Perpetual EASEMENT. Perpetual RENEWAL. Person of COLOR. Personal and landed ESTATE. Personal and landed ESTATES. Personal CHATTEL. Personal CHATTELS. Personal ESTATE. Personal ESTATES. Personal GOODS. Personal LABOR. Personal PROPERTY. Personal SECURITY. Personal STATUTE. Personal VIOLENCE. Philadelphia FUNDS. Pleading ISSUABLE. Plunder and STEAL. Poor RELATIONS. Poorest RELATIONS. Power of ATTORNEY. Power of SALE. Power to CHARGE. Presumptive HEIR. Presumptive NOTICE. Prima facie EVIDENCE. Principal and ACCESSORY. Printed in PLAIN English type. Prior in DATE. Private BRIDGE. Private CHARITY. Private CORPORATION.</p>
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Private NUISANCE.
 Private PARTNERSHIP.
 Private WAY.
 Private WAYS.
 Proceed to SEA.
 Promissory NOTE.
 Proof beyond REASONABLE DOUBT.
 Prosecute WITH effect.
 Prosecuting WITNESS.
 Providing by ORDINANCE
 Public ACT.
 Public BRIDGE.
 Public CHARITY.
 Public civil OFFICER.
 Public CORPORATION.
 Public HIGHWAY.
 Public IGNOMINY.
 Public MINISTER.
 Public NUISANCE.
 Public OFFICE.
 Public OFFICER.
 Public OFFICERS.
 Public or joint STOCK.
 Public SHOWS.
 Public SQUARE.
 Public STOCK.
 Public TAX.
 Public TAXES.
 Public TEACHER.
 Public USE.
 Public WAR.
 Quarter of a YEAR.
 Quarter YEARLY.
 Quasi CORPORATION.
 Quasi EXECUTION.
 Ratable FOLLS.
 Ready MONEY.
 Ready to be DELIVERED.
 Real and personal ESTATE.
 Real CHATTEL.
 Real CONTRACT.
 Real ESTATE.
 Real ESTATES.
 Real or personal SECURITIES.
 Real PROPERTY.
 Real SECURITIES.
 Reasonable DILIGENCE.
 Reasonable ESTOVERS.
 Reasonable NOTICE.
 Reasonable PENALTY.
 Reasonable TIME.
 Reasonable USAGE.
 Reasonable USE and wear only excepted.
 Receipt IN full.
 Regular CLERK.
 Relations ON my side.
 Removal of such PERSON.
 Repaving STREET.
 Reserving two ROOMS.
 Resident INHABITANTS.
 Residuary LEGATEE.
 Residue of ESTATE.
 Rest of my ESTATE.
 Resulting TRUST.
 Retrospective STATUTE.
 Right HEIRS.
 Right of WAY.

Right to bear ARMS.
 Rights of ENTRY.
 Royal BLOOD.
 Running WATER.
 Rural HOMESTEAD.
 Said DEFENDANTS.
 Sailing FROM a port.
 Sale for CASH.
 Satisfactory ARRANGEMENT.
 Satisfactory PROOF.
 Sea STORES.
 Seeking a LIVELIHOOD.
 Separate USE.
 Set our HANDS.
 Shall and may be LAWFUL.
 Shall be BEGOTTEN.
 Shall be CONFIRMED.
 Shall be SATISFACTION.
 Shall be TAKEN out of the State.
 Shall have liberty to PURCHASE.
 Shall RECEIVE OR TAKE.
 Shall WARRANT.
 Should come into POSSESSION.
 Should commit SUICIDE.
 Should she MARRY during, &c.
 Simple LARCENY.
 Six MONTHS.
 Sole CORPORATION.
 Solicitor's LIEN.
 Some of my BEST linen.
 Sound in WIND and limb.
 Special DEPOSIT.
 Special DEPUTATION.
 Special; GENERAL.
 Special LETTER OF CREDIT.
 Special VERDICT.
 Specific APPROPRIATION.
 Specific LEGACY.
 Spiritual OFFICER.
 State TAX.
 Statute MILES.
 Statute of LIMITATIONS.
 Stock of WOOD.
 Strict SETTLEMENT.
 Strong and spirituous LIQUORS.
 Succession PER STIRPES.
 Such as he would be RESPONSIBLE FOR.
 Such assessment MADE and demanded.
 Such CHILD.
 Sufficient DISCHARGES.
 Sufficient INDEMNITY.
 Sum DUE.
 Summary PROCESS.
 Superior COURT.
 Taxable INHABITANT.
 Temporal ESTATE.
 Temporary RESIDENCE.
 Ten days after PEACE is made.
 Tenancy at WILL.
 Tenancy by SUFFERANCE.
 Tenant at SUFFERANCE.
 Tenant at WILL.
 Tenement BLOCK.
 Tenure IN capite.
 Term of YEARS.
 Testamentary CAPACITY.

The best of my LINEN.
 The HEARING.
 The just PROPORTION or share.
 The MINISTRY.
 The remainder of my PROPERTY.
 The said DEFENDANT.
 The sheriff shall PRESIDE.
 The survivor or his ASSIGNS.
 The SUSQUEHANNA.
 Their ESTATE.
 Their PARTS.
 Their REPRESENTATIVES.
 Their SUCCESSORS.
 Then SURVIVING and remaining.
 There to be CORRECTED.
 This FALL.
 This is to CERTIFY.
 Three months' NOTICE.
 Three QUARTERS.
 Three weeks SUCCESSIVELY.
 Timber trees and great WOODS.
 Time of MEMORY.
 To A. and his CHILDREN.
 To be DIVIDED.
 To be divided amongst YET.
 To be FORWARDED.
 To be MEASURED.
 To be PAID.
 To be RESPONSIBLE.
 To be TRANSFERRED.
 To DEAL.
 To finish said house ready for OCCUPANCY.
 To have, hold and ENJOY.
 To have, hold, occupy, use and ENJOY.
 To her best ADVANTAGE.
 To her SOLE use.
 To her USE.
 To his DAMAGE.
 To his WIFE.
 To keep SAFELY.
 To make it GOOD.
 To make SATISFACTION.
 To MARKET.
 To my FAMILY.
 To my PRESENT physician.
 To my RELATION.
 To sell and dispose of at her PLEASURE.
 To suppress and RESTRAIN.
 To that EFFECT.
 To the poor INHABITANTS.
 To the three CHILDREN of A.
 To VIEW.
 To WILL it.
 Together with all WAYS thereunto appertaining.
 Total LOSS.
 Transportation; COMMERCE.
 Transportation of MERCHANTS.
 True CONSIDERATION.
 True POSSESSION.
 True VALUE.
 Trustees of INHERITANCE.
 Two reputable CITIZENS.
 Two YEARS.
 Two years after DEMAND.

Under HAND and seal.	Warranty DEED.	With the benefit of SURVIVOR-
Under his HAND.	Was duly SWORN.	SHIP.
Under the HANDS.	We bind OURSELVES.	Within half a MILE.
Under their HANDS.	We bind ourselves and each	Within one MONTH next fol-
Undue ADVANTAGE.	of us.	lowing.
Undue INFLUENCE.	We bind OURSELVES and each	With three MONTHS.
Unfinished BUILDING.	of us.	Within twelve calendar
United States of NORTH Amer-	We bind OURSELVES, our heirs,	MONTHS.
ica.	&c.	Without any DEDUCTION on
Unlawful COHABITATION.	We shall be obliged to CON-	account of taxes.
Unqualified OPINION.	SENT.	Without any INTERRUPTION.
Uplifted HAND.	We UNDERTAKE to pay.	Without being MARRIED.
Upon CONDITION.	Well and truly PERFORMING.	Without DEFALCATION.
Upon SALE OR RETURN.	What REMAINS.	Witness my HAND.
Upon sight of the BODY.	When DUE.	Witness the HANDS.
Use and BENEFIT.	When lawfully REQUESTED.	Words of ENTREATY.
Used the SEA.	When RECOVERED.	Work, labor and MATERIALS.
Useful ARTS.	When she is DIVORCED.	Working TOOLS.
Usual COVENANTS.	When thereto REQUESTED.	Worldly GOODS.
Usual PUNISHMENTS.	Which I promise NEVER to	Writ of ASSISTANCE.
	pay.	Writ of DOWER.
Valuable PROPERTY.	While in SERVICE.	Writ of PROHIBITION.
Vested INTEREST.	Whole of his remaining PROP-	Writing OBLIGATORY.
Vested REMAINDER.	ERTY.	
Virtute OFFICI.	Wholesale factory PRICES.	Yearly PAYMENTS.
Voidable INDENTURE.	Wilful DESERTION.	Yearly VALUE.
Voluntary ESCAPE.	Wilful NEGLIGENCE.	You are a VAGRANT.
Voluntary WASTE.	With all USUAL and reasonable	You have committed an act
Vote by PROXY.	covenants.	for which I can TRANSPORT
	With liberty to cruise six	you.
Want of CARE.	WEEKS.	Younger CHILD.
Warranted to DEPART.	With STRONG HAND.	Younger CHILDREN.

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